


Guidance on the procedure for a decision by a CAA Board Member pursuant to Part 1 (Regulation 7) of The Operation of Air Services in the Community Regulations 2009 and Chapter II of Regulation (EC) No 1008/2008

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CONTENTS

Contents	3
1. OVERVIEW	4
2. LEGAL FRAMEWORK	5
3. PROCEDURE	7
4. PREPARING FOR A HEARING	10
5. THE HEARING	13
6. DELIBERATIONS AND DECISION	15
7. TEMPORARY OPERATING LICENCE	18
8. RELATED PARTIES THAT HOLD BOTH AN OPERATING LICENCE AND AN ATOL	19
9. RIGHTS OF APPEAL	20
10. COMPLAINTS	21

1. OVERVIEW

1.1 Introduction

This is a practical guide to the making of a decision by the Civil Aviation Authority ('CAA') to revoke or suspend an operating licence pursuant to *The Operation of Air Services in the Community Regulations 2009* ('UK Regulations') and *Regulation (EC) No 1008/2008 Common Rules for the Operation of Air Services in the EU* ('European Regulations').

This guidance does not replace any laws or regulations and does not constitute legal advice.

1.2 Decision to revoke an operating licence

The UK Regulations and European Regulations grant the CAA a number of powers in relation to the revocation or suspension of an operating licence. The CAA must make decisions on these matters where it is satisfied that specified circumstances exist.

In practice, it is employees of the CAA in the CAA's Consumer and Markets Group ('CMG') who deal with operating licences and operating licence holders on a day to day basis. It is these employees who will assess the circumstances of a particular case and identify what in their view is the appropriate action for the CAA to take.

Where CMG consider a decision should be made to suspend or revoke an operating licence, CMG must first make a proposal to do so. A decision on the proposal may then only be taken by a panel of one or more CAA Board Members ('CAA Panel').

Before exercising its power to revoke or suspend a licence, the CAA Panel must consider the proposal from CMG and any representations made by the licence holder.¹

The processes described in this guidance are designed to ensure fairness for the licence holder whilst providing the CAA Panel with all the information they require to make a decision.

¹ Regulation 7(2) of the UK Regulations.

2. LEGAL FRAMEWORK

2.1 The UK Regulations

Part 1 of the UK Regulations (Annex A) contains the regulations dealing with the suspension or revocation of operating licences. Regulation 7 of the UK Regulations sets out the CAA's power to suspend or revoke licences.

The CAA is the competent licensing authority for the purposes of Articles 3 to 11, 14, and 15(3) of the European Regulations.²

2.2 The European Regulations

The European Regulations (Annex B) set out in Recital 6 the purpose of the powers granted to the CAA under Article 9:

To reduce risks to passengers, Community air carriers failing to fulfil the requirements for maintaining a valid operating licence should not be allowed to continue operations. In such cases, the competent licensing authority should revoke or suspend the operating licence.

The CAA has a duty pursuant to Article 8(2) to closely monitor a licence holder's compliance with the requirements set out in Chapter II of the European Regulations.

The Test

The CAA must exercise its power to revoke or suspend an operating licence under Article 9 of the European Regulations in three circumstances:

1. If it is no longer satisfied that the Community air carrier can meet its actual and potential obligations for a 12-month period;
2. If the licence holder knowingly or recklessly furnishes the CAA with false information on an important point; or
3. If the licence holder's air operator's certificate is suspended or withdrawn.

In addition the CAA may suspend or revoke an operating licence in circumstances where:

1. audited accounts have been requested by the CAA and not provided within one month; or
2. the licence holder no longer satisfies the requirements relating to good repute set out in Article 7 (Annex B).

² Regulation 5 of the UK Regulations

2.3 The Human Rights Act

The Human Rights Act 1998 applies to the procedures for a decision pursuant to Regulation 7 of the UK Regulations or Article 9 of the European Regulations. They require compliance with the European Convention on Human Rights (ECHR).

Article 6 of the ECHR guarantees the right to a fair trial. More specifically, it provides that *“in the determination of his civil rights everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law.”*

This process, combined with a right of appeal to the Secretary of State as provided for by Regulation 9 and Schedule 2 of the UK Regulations has been designed to satisfy the right to a fair trial pursuant to Article 6 of the ECHR.

2.4 Official Record Series 1 (ORS1)

Annex 5 to ORS1 sets out procedures for the grant, suspension and revocation of operating licences. In so far as the procedures set out under ORS1 are inconsistent with the procedures in this document, those in this document will prevail.

3. PROCEDURE

3.1 Key roles

3.1.1 Appointment of the CAA Board Member(s) to the CAA Panel

One or more CAA Board Members will be appointed to consider each case and reach a decision, however, it should be noted that one CAA Board Member may make the decision alone. Where the CAA Panel consists of two or more CAA Board Members, one Board Member will normally act as Chair of the Panel and will have the casting vote in the event the Board Members making the decision disagree.

3.1.2 Appointment of Hearing Manager, CAA Panel Lawyer and CMG Lawyer

If the licence holder requests a hearing, CMG will:

- appoint a Hearing Manager who will be identified in the proposal letter; and
- request that CAA's General Counsel appoint a CMG lawyer and a CAA Panel Lawyer.

3.1.3 Role of the Hearing Manager

The Hearing Manager is a CAA employee whose role is to manage the administration of the Hearing. The Hearing Manager will have no prior involvement in the CMG proposal and will act as the point of contact for CMG and the licence holder. The Hearing Manager is responsible for receiving documents, handling queries and making the necessary arrangements for the hearing of the decision.

3.1.4 Role of the CAA Panel Lawyer

The role of the CAA Panel Lawyer is to advise the CAA Board Member(s), referred to in this guidance as the CAA Panel, who will make the decision. The CAA Panel Lawyer will normally have had no prior involvement in the case and will not discuss the case with CMG or with the CMG Lawyer.

Full details of the decision the CAA Panel is required to make will be set out in the hearing bundle (see section 4.1.5 below).

The CAA Panel Lawyer will provide advice to the CAA Panel on matters of law and procedure.

3.1.5 The role of the CMG Lawyer

The role of the CMG Lawyer is to assist and support the CMG employees responsible for the proposal under review.

3.2 Normal procedure for making decisions under Regulation 7 of the UK Regulations and Article 9 of the European Regulations

3.2.1 The proposal

Where CMG considers that the CAA should revoke or suspend an operating licence, CMG will send out a notice in the form of a written proposal (the 'proposal letter'). The proposal letter will normally provide the licence holder with at least 21 days' notice of the date on which a CAA Panel will make such a decision.

Once the proposal letter is sent out by CMG, any letters or communications relating directly to the hearing of the proposal must be addressed to and dealt with by the Hearing Manager.

Other communications, not directly relating to the hearing, between the licence holder and CMG may continue normally, although these may be taken into consideration by the CAA Panel before making a decision.

A proposal letter is, in effect, a letter which sets out a recommendation that the CAA Panel make the proposed decision and the reasons why CMG is making that recommendation. The CAA Panel may accept the proposal being made by CMG or it may make a different decision.

3.2.2 The proposal letter

The proposal letter from CMG must include the following –

- CMG's reasons for the proposal;
- any documents supporting the proposal and other relevant evidence; and
- the date by which the licence holder must serve their written representations. This will normally be 10 days from the date of the proposal letter.

The proposal letter should also include the following —

- the name of the proposed Hearing Manager at the CAA to whom the licence holder's written representations should be sent; and
- the date and location of the hearing that will be held if one is requested by the licence holder. This will normally be the earliest practicable date at least 21 days after the date on which the proposal letter was sent to the licence holder.

3.2.3 Written representations

Where the licence holder disagrees with the proposal from CMG, it should send written representations to the Hearing Manager explaining its reasons. This must normally be done within 10 days from the date of CMG's proposal letter, including the date it was sent, unless a CAA Panel has agreed to an extension of time.

The written representations of the licence holder should include the following—

- a response to CMG's reasons for the proposal;
- any documents supporting the response and other documentary evidence the licence holder wants the CAA Panel to take into account (if not already attached to the proposal letter);
- a request for a hearing, if one is sought (and confirmation whether the licence holder intends to attend that hearing);
- if the licence holder wants a hearing but cannot attend on the day set out in the proposal letter, it should inform the Hearing Manager as soon as practicable. (The CAA Panel will then decide whether the proposed hearing date will be rescheduled for another date. If the CAA Panel is prepared to move the date of the hearing, it will instruct the Hearing Manager to fix a new date in consultation with the parties); and
- any arrangements the CAA needs to make to ensure access at the hearing (such as interpreter, restricted mobility access, etc).

3.2.4 Extensions of time

The CAA Panel may agree to extend any relevant time limit, whether or not it has already expired. It may do this where the CAA Panel considers that it is reasonable to do so, or where by not extending the time limit would result in substantial injustice.

A request for an extension of any time limit by CMG or the licence holder must be sent in writing to the Hearing Manager as soon as practicable. The Hearing Manager will copy the request to the other party which may submit comments on the request. Normally, any comments will need to be submitted within 2 working days. The Hearing Manager will then invite the CAA Panel to consider the request and any comments. The CAA Panel's decision will be communicated to both parties in writing by the Hearing Manager.

3.2.5 CAA Panel may request additional information

The CAA Panel can request additional information from CMG or the licence holder at any time before making a final decision.

4. PREPARING FOR A HEARING

4.1 Details of the hearing

4.1.1 Holding a hearing

The licence holder may request a hearing at which it may choose to be present and make oral representations by sending a written request to the Hearing Manager. This is done at the same time as written representations are delivered.

In the absence of a request for a hearing, the CAA Panel may still choose to hold a hearing if it considers it appropriate to do so in order to make the decision. Both parties have a right to appear and the hearing will proceed with only CMG present if the licence holder does not attend.

4.1.2 Date of the hearing

If a hearing is to be held, it should take place on the date set out in the proposal letter unless the CAA Panel has agreed to an extension of time.

4.1.3 Venue of the hearing

The venue will be notified to the parties by the Hearing Manager. It will normally be held at the London offices of the CAA.

4.1.4 Additional material

In most cases, any additional evidence or material that the licence holder wishes to submit in addition to its written representations after the expiry of 10 days from the date of CMG's proposal letter, but before the hearing, (or after such longer period as may have been agreed by CMG or the CAA Panel in the particular case) will be considered by—

- CMG, who will consider whether this further material affects the basis of the proposal (which may need to be withdrawn or supplemented with further information to the CAA Panel making the decision); and
- the CAA Panel.

The CAA Panel may allow further evidence from CMG where it considers that the interests of a fair decision would benefit from that evidence.

The submission of any significant new material by one party close to the hearing date (outside the 10 day limit) may require an adjournment of the hearing to a later date to enable adequate consideration by the other party and the CAA Panel of that material.

4.1.5 The hearing bundle

The hearing bundle will comprise one or more of—

- the CMG proposal letter with supporting documents and any other evidence;
- the written representations of the licence holder with supporting documents and any other evidence;
- any additional information or evidence submitted by the parties and accepted by the CAA Panel; and
- answers to questions posed by the CAA Panel in writing.

CMG and the licence holder will be supplied with a copy of the hearing bundle by the Hearing Manager as soon as practicable and before the hearing date.

This will normally be at least 3 working days before the hearing unless the disclosure of supplemental material by CMG or the licence holder has delayed completion of the hearing bundle.

4.1.6 Legal representation

All parties have the right to be legally represented and may attend with whatever witnesses (persons with evidence or information relevant to the terms of CMG's proposal or the licence holder's disagreement with the proposal) it wishes.

The licence holder should be aware that if any significant new material is submitted or new point raised at the hearing, the CAA Panel may need to adjourn the hearing to provide time for CMG and the CAA Panel to consider it.

4.1.7 Interpreters

The Hearing Manager, rather than the licence holder will arrange an interpreter. The Hearing Manager should check that the interpreter and licence holder understand each other. The Hearing Manager should be alert to the possible need for a particular dialect. It will be important to record the hearing where an interpreter is used to assist in dealing with a challenge concerning the quality of the interpretation.

4.1.8 Vulnerable persons

Questioning will be slow and steady providing several seconds for the witness to consider and respond. Other reasonable adjustments will be considered and it may be necessary to have more frequent breaks.

4.1.9 Attending the hearing

A hearing may be attended by—

- a) the CAA Board Member(s) comprising the CAA Panel;
- b) a CAA legal adviser providing legal advice to the CAA Panel (CAA Panel Lawyer);

- c) the licence holder;
- d) a legal adviser or other representative of the licence holder;
- e) witnesses requested by the licence holder to give evidence;
- f) CMG employee/s responsible for the proposal letter;
- g) a CAA legal adviser providing legal advice to CMG;
- h) witnesses requested by CMG to give evidence;
- i) the Hearing Manager;
- j) a shorthand writer;
- k) interpreters (if required); and
- l) members of the public (unless the hearing is to be in private).

4.2 CAA Panel preparation for the hearing

4.2.1 Reading the bundle

The CAA Panel Members will read the bundle of documents before the hearing. They should identify issues of fact where there is a dispute between the parties which they may be required to determine. They should however avoid coming to any concluded views at this stage so that their minds are open to argument by the parties at the hearing.

4.2.2 Preliminary questions before the hearing

If the CAA Panel wish to raise any preliminary questions with CMG or the licence holder prior to the hearing, the CAA Panel should discuss those questions with the CAA Panel Lawyer. The CAA Panel Lawyer will pass them to the Hearing Manager to send to the respective parties. The Hearing Manager will send them to the CMG Lawyer or the licence holder with a request for an answer within 7 days (or in any event before the hearing).

Both questions and answers will be disclosed to the other party by the Hearing Manager prior to the hearing. The other party may submit any comments either in writing to the Hearing Manager for circulation and/or comment on the matter at the hearing.

5. THE HEARING

5.1 Administrative arrangements

The Hearing Manager is responsible for ensuring appropriate administrative arrangements are made.

5.2 Hearing normally to be in public

Hearings will be held in public unless one of the parties requests that the Hearing is held in private and the CAA Panel consider it appropriate to do so.

Any request for the hearing to be held in private must be sent to the Hearing Manager as soon as practicable. The CAA Panel will decide whether the hearing should be held in private. The Hearing Manager will communicate the outcome of the request to both parties.

In certain cases, the CAA Panel may decide that part of the hearing is to be held in private or that certain information about the proceedings, 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 the licence holder.

The CAA Panel may permit any person to attend the hearing, whether or not it is in private.

5.3 The standard and burden of proof

The CAA Panel must determine any disputed issues of fact on the balance of probabilities.

Where the applicable legislation requires that the CAA be satisfied as to a particular matter, such as whether the licence holder is of good repute, it is for the licence holder to satisfy the CAA Panel that they meet the requirement. So if the CAA Panel considered that the evidence as to whether or not the licence holder was of good repute was evenly balanced, it must find that the licence holder is not entitled to the licence in question.

5.4 Conduct of the hearing

The hearing will be conducted by the CAA Panel in accordance with a proposed Agenda which will be circulated by the Hearing Manager to each party before the hearing.

The formal rules of evidence that apply in civil proceedings in the English courts will not apply. If parties are not legally represented, the CAA Panel, with the assistance of the CAA Panel Lawyer, will guide the licence holder through the process of the hearing.

The hearing will allow both parties the opportunity to make oral representations before the CAA Panel, seek clarification of any issues arising and ask questions of each other.

The licence holder or CMG may call one or more witnesses. The other party must be given an opportunity to question each witness. The party who called the witness should

be offered the opportunity to re-examine his/her witness on any points brought up in the questioning by the other party (but not to bring up new points).

The CAA Panel may ask questions of CMG, the licence holder and any witnesses. The licence holder, or their representative, will always be allowed to make the final statement, prior to the CAA Panel bringing the hearing to a close.

The CAA Panel must satisfy itself generally that the applicant/holder has been properly and fairly treated and that this guidance has been followed.

The CAA Panel may adjourn the hearing to a later date for any reason and in so doing, the CAA Panel must communicate its reasons to CMG and to the licence holder at the end of that hearing. In practice, the reasons for an adjournment will also be communicated to CMG and to the licence holder by the Hearing Manager in the form of a letter, normally within 7 days of the date of the hearing.

5.5 Transcript

A shorthand writer will create a transcript of the hearing. On request, and as soon as it is available, an electronic copy of the transcript of the hearing will be made available to the parties by the Hearing Manager. If the hearing was in private, only those attending the hearing may request a copy.

The CAA is entitled to request payment for the transcript from the licence holder.

6. DELIBERATIONS AND DECISION

6.1 Procedure where the licence holder does not respond

Where no response to a proposal letter is received within the specified time from the licence holder, the Hearing Manager will notify the CAA Panel via the CAA Panel Lawyer, and the CMG Lawyer.

At this stage, the CAA Panel may request legal advice from the CAA Panel Lawyer before deliberating on a decision. Following consideration of the representations received from CMG, the CAA Panel Members may decide that the decision be taken without a hearing.

If there is to be no hearing, the CAA Panel must wait until the expiry of 21 days from the date of service of the proposal letter before making a decision. The decision may then be taken on the basis of the proposal letter.

Where the CAA Panel does not wish to make a decision without a hearing, notice of the hearing must be sent to the licence holder. The licence holder will still have the right to attend and make oral representations at the hearing.

Where no response to a proposal letter is received, and the CAA Panel wishes to ask questions of CMG, it must hold a hearing and ask those questions at the hearing. The hearing will always be in public, unless after seeking the views of CMG the CAA Panel considers there are special circumstances to merit the hearing being held in private.

6.2 What will the CAA Panel consider when making its decision

The only information that will be made available to the CAA Panel for the purposes of the decision will be:

- the hearing bundle;
- any additional material submitted to the CAA Panel subsequently in accordance with section 4.1.4 (where appropriate); and
- oral evidence and other material put forward at the hearing.

6.3 Determining the facts

The CAA Panel decide on what factual basis it is going to make its decision, apply the facts as found by them to the law and any written policy and reflect that analysis in the final decision letter.

Where there are disputes of fact, the CAA Panel will first need to determine whether the particular fact in dispute is relevant to the decision which it must take.

Where the CAA Panel finds facts are irrelevant, the CAA Panel's decision will say so, and give reasons.

Where the CAA Panel finds facts are relevant and in dispute, the CAA Panel will be required to state in the decision the conclusion it has reached on the relevant facts and why.

6.4 Reaching the decision

The decision must be that of the Members constituting the CAA Panel. The reasoning for that decision must also be that of the CAA Panel.

This means that the Panel Members must make the decision themselves without any involvement from other parties (including the CAA Panel Lawyer). They will normally meet immediately after a hearing without anyone else present and make their decision and identify their reasons for it. They may wish to consider further and make their decision following meetings or telephone discussions over the next few days. But, they must not discuss the case with anyone else, other than to take legal advice from the CAA Panel Lawyer until the decision is made.

Article 10 of the European Regulations requires that the CAA make its decision as soon as possible, and not later than three months after all the necessary information has been submitted. In normal circumstances, the CAA would expect to make its decision substantially more promptly and in accordance with the timetable set out in this guidance.

Where a hearing has taken place, the decision will usually be reserved and sent to the licence holder and to CMG in writing at a later date (normally within 10 working days from the date of the hearing).

The CAA Panel must send a substantive written statement of reasons to the licence holder and CMG setting out the reasons for the decision.

For the sake of clarity, no decision shall be made by the CAA Panel until the hearing has formally concluded and/or all relevant information, including, but not limited to the proposal letter, any further information received from CMG and any written representations from the licence holder have been fully considered by the CAA Panel Members.

6.5 Effective date of revocation or suspension

The UK Regulations provide (at Regulation 8), that a decision to revoke or suspend a licence has effect 14 days after the licence holder is informed of the decision, unless the suspension or revocation is made on application of the licence holder or in consequence of a request made by the Commission under Article 15(3) of the European Regulation, in which case the decision has effect on and from the day after the date on which the holder is notified of the decision.

6.6 Publication of the decision

Within 10 days of the date of a hearing, or 31 days of the date of the proposal letter if no oral hearing is required, the CAA Panel will publish its decision.

CAA Panel decisions will be published on the CAA's website, including the name of the licence holder.

After five years, the decision will be removed from the website.

7. TEMPORARY OPERATING LICENCE

7.1 Power to issue a temporary operating licence

Article 9(1) of the European Regulations provides that the CAA *may grant a temporary operating licence, not exceeding 12 months, pending financial reorganisation of a Community air carrier.*

7.2 Conditions for a temporary operating licence

Upon application, the CAA may grant a temporary licence *provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC [Air Operator Certificate], and that there is a realistic prospect of a satisfactory financial reconstruction within the time period of the temporary licence.*

7.3 Procedure for the grant of a temporary operating licence

Any request for a temporary operating licence must be supported by appropriate evidence, including evidence that will set out how the licence holder's request for a temporary operating licence fulfils the conditions contained in Article 9(1) of the European Regulations.

The CAA's decision as to whether or not a temporary operating licence should be granted will be considered, determined, and communicated alongside the decision to suspend or revoke an operating licence.

8. RELATED PARTIES THAT HOLD BOTH AN OPERATING LICENCE AND AN ATOL

A proposal to revoke or suspend an operating licence may coincide with a related proposal to exercise the CAA's powers in respect of a related party pursuant Part 5 of the *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012*. In this case, the CAA will follow the statutory procedure for ATOL decision-making as set out in its published guidance³ and would expect to conduct its investigative and decision-making procedures under Regulation 7 of the UK Regulations and Article 9 of the European Regulations in tandem with the ATOL decision-making process.

Therefore, if it is determined that a hearing would be appropriate in relation to either (or both of) a decision pursuant to Part 5 of the *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012* and a related decision under Regulation 7 of the UK Regulations and Article 9 of the European Regulations in relation to related licence holders, the CAA would normally expect to consider both matters at the same hearing.

³ Guidance on the procedure for a decision by a CAA Board Member pursuant to Part 4 (Regulation 38) and Part 5 of the *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012*.

9. RIGHTS OF APPEAL

9.1 Appeal to the Secretary of State

Following a decision by the CAA to revoke or suspend an operating licence, the licence holder has a right to appeal to the Secretary of State pursuant to Regulation 9 of the UK Regulations and Schedule 2 of the UK Regulations (Annex C).

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

9.2 Procedure on appeal

The procedure on appeal is set out in Schedule 2 to the UK Regulations.

The appeal process may be triggered by the appellant, who 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 (Schedule 2, Paragraph 3).

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

10. COMPLAINTS

Any complaint concerning the manner in which a decision is made under this procedure should be sent in writing to the General Counsel, Civil Aviation Authority, Aviation House, Gatwick Airport South, Gatwick, West Sussex, RH6 0YR.

ANNEX A

The Operation of Air Services in the Community Regulations 2009

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⁽⁵⁾ 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.

(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(6).

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.

ANNEX B**Regulation (EC) No 1008/2008****CHAPTER II****OPERATING LICENCE****Article 3****Operating licence**

1. No undertaking established in the Community shall be permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence.

An undertaking meeting the requirements of this Chapter shall be entitled to receive an operating licence.

2. The competent licensing authority shall not grant operating licences or maintain them in force where any of the requirements of this Chapter are not complied with.

3. Without prejudice to any other applicable provisions of Community, national, or international law, the following categories of air services shall not be subject to the requirement to hold a valid operating licence:

- (a) air services performed by non-power-driven aircraft and/or ultralight power-driven aircraft; and
- (b) local flights.

Article 4**Conditions for granting an operating licence**

An undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that:

- (a) its principal place of business is located in that Member State;
- (b) it holds a valid AOC issued by a national authority of the same Member State whose competent licensing authority is responsible for granting, refusing, revoking or suspending the operating licence of the Community air carrier;
- (c) it has one or more aircraft at its disposal through ownership or a dry lease agreement;
- (d) its main occupation is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;

(e) its company structure allows the competent licensing authority to implement the provisions of this Chapter;

(f) Member States and/or nationals of Member States own more than 50 % of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party;

(g) it meets the financial conditions specified in Article 5;

(h) it complies with the insurance requirements specified in Article 11 and in Regulation (EC) No 785/2004; and

(i) it complies with the provisions on good repute as specified in Article 7.

Article 5

Financial conditions for granting an operating licence

1. The competent licensing authority shall closely assess whether an undertaking applying for the first time for an operating licence can demonstrate that:

(a) it can meet at any time its actual and potential obligations established under realistic assumptions, for a period of 24 months from the start of operations; and

(b) it can meet its fixed and operational costs incurred by operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.

2. For the purposes of the assessment referred to in paragraph 1, each applicant shall submit a business plan for, at least, the first three years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data referred to in point 1 of Annex I.

3. Paragraphs 1 and 2 shall not apply to an undertaking applying for an operating licence intended to cover operations with aircraft of less than 10 tonnes maximum take-off mass (MTOM) and/or less than 20 seats. Such undertakings shall demonstrate that their net capital is at least EUR 100 000 or provide, when required by the competent licensing authority, all relevant information for the purposes of the assessment referred to in paragraph 1, in particular the data referred to in point 1 of Annex I.

The competent licensing authority may nevertheless apply paragraphs 1 and 2 to an undertaking applying for an operating licence under the provisions of the previous subparagraph that intends to operate scheduled air services or whose turnover exceeds EUR 3 million per year.

Article 6

Air operator certificate

1. The granting and validity of an operating licence shall at any time be dependent upon the possession of a valid AOC specifying the activities covered by the operating licence.
2. Any modification in the AOC of a Community air carrier shall be reflected, where appropriate, in its operating licence.

Article 7

Proof of good repute

1. Where, for the purpose of issuing an operating licence, proof is required that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt, the competent licensing authority shall accept as sufficient evidence in respect of nationals of Member States the production of documents issued by the competent authorities in the Member State of origin or the Member State where the person has his/her permanent residence showing that those requirements are met.
2. Where the Member State of origin or the Member State where the person has his/her permanent residence does not issue the documents referred to in paragraph 1, such documents shall be replaced by a declaration on oath or — in Member States where there is no provision for declaration on oath — by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State where the person has his/her permanent residence. Such authority, notary or qualified professional body shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.
3. The competent licensing authority may require that the documents and certificates referred to in paragraphs 1 and 2 be presented no more than three months after their date of issue.

Article 8

Validity of an operating licence

1. An operating licence shall be valid as long as the Community air carrier complies with the requirements of this Chapter.

A Community air carrier shall at all times be able on request to demonstrate to the competent licensing authority that it meets all the requirements of this Chapter.

2. The competent licensing authority shall closely monitor compliance with the requirements of this Chapter. It shall in any case review compliance with these requirements in the following cases:

- (a) two years after a new operating licence has been granted;
- (b) when a potential problem has been suspected; or
- (c) at the request of the Commission.

In case the competent licensing authority suspects that financial problems of a Community air carrier might affect the safety of its operations, it shall immediately inform the authority competent for the AOC.

3. The operating licence shall be resubmitted for approval when a Community air carrier:

- (a) has not started operations within six months of the granting of an operating licence;
- (b) has ceased its operations for more than six months; or
- (c) which has been licenced on the basis of the first subparagraph of Article 5(3) intends to engage in operations with aircraft above the size threshold specified in Article 5(3) or no longer complies with the financial conditions set out therein.

4. A Community air carrier shall provide to the competent licensing authority its audited accounts no later than six months following the last day of the respective financial year, unless otherwise provided for in national law. During the first two years of operation of a Community air carrier, the data as referred to in point 3 of Annex I shall be made available to the competent licensing authority upon request.

The competent licensing authority may at any time assess the financial performance of a Community air carrier to which it has granted an operating licence by requesting the relevant information. As part of such an assessment, the Community air carrier in question shall update the data referred to in point 3 of Annex I and provide it to the competent licensing authority upon request.

5. A Community air carrier shall notify the competent licensing authority:

- (a) in advance of any plans for the operation of a new air service to a continent or a world region not previously served, or any other substantial change in the scale of its activities, including, but not limited to, changes in the type or number of aircraft used;
- (b) in advance of any intended mergers or acquisitions; and
- (c) within 14 days of any change in the ownership of any single shareholding which represents 10 % or more of the total shareholding of the Community air carrier or of its parent or ultimate holding company.

6. If the competent licensing authority deems the changes notified under paragraph 5 to have a significant bearing on the finances of the Community air carrier, it shall require the submission of a revised business plan incorporating the changes in question and covering, at least, a period of 12 months from its date of implementation as well as the data referred to in point 2 of Annex I, in addition to the information to be provided under paragraph 4.

The competent licensing authority shall take a decision on the revised business plan as to whether the Community air carrier

can meet its existing and potential obligations during that period of 12 months. Such a decision shall be taken not later than three months after all the necessary information has been submitted to it.

7. In relation to Community air carriers licenced by it the competent licensing authority shall decide whether the operating licence shall be resubmitted for approval in case of change in one or more elements affecting the legal situation of a Community air carrier and, in particular, in the case of a merger or takeover.

8. Paragraphs 4, 5 and 6 shall not apply to Community air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOM and/or less than 20 seats. Such Community air carriers shall at all times be able to demonstrate that their net capital is at least EUR 100 000 or to provide when required by the competent licensing authority the information relevant for the purposes of the assessment referred to in Article 9(2).

The competent licensing authority may nevertheless apply paragraphs 4, 5 and 6 to Community air carriers licenced by it that operate scheduled air services or whose turnover exceeds EUR 3 million per year.

Article 9

Suspension and revocation of an operating licence

1. The competent licensing authority may at any time assess the financial performance of a Community air carrier which it has licenced. Based upon its assessment, the authority shall suspend or revoke the operating licence if it is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period. Nevertheless, the competent licensing authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of a Community air carrier provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC, and that there is a realistic prospect of a satisfactory financial reconstruction within that time period.

2. Whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against a Community air carrier licenced by it the competent licensing authority shall without delay make an in-depth assessment of the financial situation and on the basis of its findings review the status of the operating licence in compliance with this Article within a time period of three months.

The competent licensing authority shall inform the Commission of its decisions, relating to the status of the operating licence.

3. When the audited accounts referred to in Article 8(4) have not been communicated within the deadline indicated in that Article, the competent licensing authority shall, without undue delay, request the Community air carrier to communicate these audited accounts.

If the audited accounts are not communicated within one month, the operating licence may be revoked or suspended.

4. The competent licensing authority shall suspend or revoke the operating licence if the Community air carrier knowingly or recklessly furnishes the competent licensing authority with false information on an important point.

5. In case a Community air carrier's AOC is suspended or withdrawn, the competent licensing authority shall immediately suspend or revoke that air carrier's operating licence.

6. The competent licensing authority may suspend or revoke the operating licence of a Community air carrier if such a carrier no longer satisfies the requirements relating to good repute set out in Article 7.

Article 10

Decisions on operating licences

1. The competent licensing authority shall take a decision on an application as soon as possible, and not later than three months after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant. A refusal shall indicate the reasons therefor.

2. Procedures for granting, suspending and revoking operating licences shall be made public by the competent licensing authorities, which shall inform the Commission thereof.

3. A list of decisions of the competent licensing authorities to grant, suspend or revoke operating licences shall be published annually in the Official Journal of the European Union.

Article 11

Insurance requirements

Notwithstanding Regulation (EC) No 785/2004, an air carrier shall be insured to cover liability in case of accidents with respect to mail.

Article 12

Registration

1. Without prejudice to Article 13(3), aircraft used by a Community air carrier shall be registered, at the option of the Member State whose competent authority issues the operating licence, in its national register or within the Community.

2. In accordance with paragraph 1, the competent authority shall, subject to applicable laws and regulations, accept on its national register, without any discriminatory fee and without delay, aircraft owned by nationals of other Member States and transfers from aircraft registers of other Member States. No fee shall be applied to transfers of aircraft in addition to the normal registration fee.

Article 13

Leasing

1. Without prejudice to Article 4(c), a Community air carrier may have one or more aircraft at its disposal through dry or wet lease agreement. Community air carriers may freely operate wet-leased aircraft registered within the Community except where this would lead to endangering safety. The Commission shall ensure that the implementation of such a provision is reasonable and proportionate and based on safety considerations.

2. A dry lease agreement to which a Community air carrier is a party or a wet lease agreement under which the Community air carrier is the lessee of the wet-leased aircraft shall be subject to prior approval in accordance with applicable Community or national law on aviation safety.

3. A Community air carrier wet leasing aircraft registered in a third country from another undertaking shall obtain prior approval for the operation from the competent licensing authority. The competent authority may grant an approval if:

(a) the Community air carrier demonstrates to the satisfaction of the competent authority that all safety standards equivalent to those imposed by Community or national law are met; and

(b) one of the following conditions is fulfilled:

(i) the Community air carrier justifies such leasing on the basis of exceptional needs, in which case an approval may be granted for a period of up to seven months that may be renewed once for a further period of up to seven months;

(ii) the Community air carrier demonstrates that the leasing is necessary to satisfy seasonal capacity needs, which cannot reasonably be satisfied through leasing aircraft registered within the Community, in which case the approval may be renewed; or

(iii) the Community air carrier demonstrates that the leasing is necessary to overcome operational difficulties and it is not possible or reasonable to lease aircraft registered within the Community, in which case the approval shall be of limited duration strictly necessary for overcoming the difficulties.

4. The competent authority may attach conditions to the approval. Such conditions shall form part of the wet lease agreement.

The competent authority may refuse to grant an approval if there is no reciprocity as regards wet leasing between the Member State concerned or the Community and the third country where the wet-leased aircraft is registered.

The competent authority shall inform the Member States concerned about an approval it has granted for wet leasing aircraft registered in a third country.

Article 14**Right to be heard**

The competent licensing authority shall ensure that, when adopting a decision to suspend or revoke the operating licence of a Community air carrier, the Community air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure.

ANNEX C**The Operation of Air Services in the Community Regulations 2009****SCHEDULE 2****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(1) (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.