

2001 No. 2448

CIVIL AVIATION

**The Civil Aviation Authority (Amendment) Regulations
2001**

<i>Made</i> - - - - -	<i>9th July 2001</i>
<i>Laid before Parliament</i>	<i>10th July 2001</i>
<i>Coming into force</i> - -	<i>31st July 2001</i>

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred by sections 7(1) and (2) and 102(1) and (2) of and paragraph 15 of Schedule 1 to the Civil Aviation Act 1982(a) and section 7(5) of the Transport Act 2000(b) and after consultation with the Council on Tribunals under section 8 of the Tribunals and Inquiries Act 1992(c), hereby makes the following Regulations:

1. These Regulations may be cited as the Civil Aviation Authority (Amendment) Regulations 2001 and shall come into force on 31st July 2001.

2. The Civil Aviation Authority Regulations 1991(d) shall be further amended as follows:

(1) In regulation 3(1) there shall be inserted at the end of the definition of “the person concerned” “and in relation to making air traffic directions or airspace policy directions, the person who has been directed”

(2) In regulation 4(1) there shall be inserted at the beginning “Subject to regulation 31A(5)(d)”.

(3) In Regulation 5 there shall be inserted at the beginning “Subject to regulation 31A(5)(b)”.

(4) In regulation 6(1) after subparagraph (k) there shall be inserted:

- “(l) making air traffic directions;
- (m) making airspace policy directions;”

(5) In regulation 6(2) after “approval, authorisation or rating” there shall be inserted “or make an air traffic direction or an airspace policy direction”.

(6) In regulation 6(4)(b) after “or rating” there shall be inserted “or make an air traffic direction or an airspace policy direction under an Air Navigation Order”.

(7) For regulation 6(7) there shall be substituted:

“(7) Where a request under paragraph (4), (5) or (6) has been duly served, the Authority shall, before making a decision:

- (a) consider any representations which may have been served on it by the person concerned within 21 days after the date of service of the notice under that paragraph given by the Authority; and

(a) 1982 c. 16.
(b) 2000 c. 38.
(c) 1992 c. 53.
(d) S.I. 1991/1672 to which there are amendments not relevant to these Regulations.

(b) where the person concerned has requested the opportunity to make oral representations in his representations under sub-paragraph (a) above, afford him an opportunity to make such representations and consider them.

(7A) (a) Where an oral hearing is held it shall be held in public except where the Authority is satisfied that, in the interests of morals, public order, national security, juveniles or the protection of the private lives of the parties a private hearing is required, or where it considers that publicity would prejudice the interests of justice.

(b) The following persons shall be entitled to attend the hearing of an appeal, whether or not it is in private:

(i) a member of the Council on Tribunals or of the Scottish Committee of that Council; and

(ii) any other person which the Authority, with the consent of the parties, permits to attend the hearing.”

(8) In regulation 6(8)(a) after “Air Navigation Order” there shall be inserted “or making a provisional air traffic direction”.

(9) In regulation 9 after subparagraph (b) there shall be inserted:

“(bb) the provider of an air traffic control service;”.

(10) After Part III there shall be inserted:

“PART IIIA

REFERENCES IN RESPECT OF AN AIR TRAFFIC SERVICES LICENCE

Determination by the Authority

31A.—(1) Where, pursuant to a condition of an air traffic services licence, any matter or question may be referred for determination by one or more Members of the Authority pursuant to these Regulations and such a matter or question is referred, it shall be determined in accordance with the provisions of this Part of these Regulations.

(2) The function of the Authority under section 7(5) of the Transport Act 2000 with respect to the modification of a licence, to the extent it gives rise to a matter or question referred for determination by one or more members of the Authority, is hereby prescribed for the purpose of section 7(2) of the Act.

(3) For the purpose of making any determination in such a case a quorum of the Authority shall be two Members.

(4) The Authority shall sit with such technical assessors to advise it as the Authority may appoint, but the Authority shall not appoint as an assessor any person who participated in the development of any notice or counter-notice in relation to the matter or question to be determined.

(5) For the purposes of this Part of these Regulations:

(a) “an air traffic services licence” means a licence granted pursuant to section 6 of the Transport Act 2000;

(b) where the Authority is required to publish any information it may do so electronically or otherwise;

(c) where the Authority is required to make any information available at its principal office for inspection it may do so electronically or otherwise;

(d) anything which is required to be served on the Authority may be served electronically by sending it to an e-mail address which it has published for the purpose or in accordance with regulation 4.

Representations

31B.—(1) The Authority shall within one calendar month after a reference has been made serve notice of the reference on the licence holder and publish such particulars of the reference as it thinks necessary for indicating the substance of the reference, and shall make a copy of the reference available at its principal office for inspection by any person at any reasonable time.

(2) The licence holder or any other person may serve on the Authority a representation about a reference if he does so within 21 days of, in the case of the licence holder the date of service of notice or, in the case of any other person, publication of the reference by the Authority.

(3) The Authority shall make a copy of any representation which has been served on the Authority available at its principal office for inspection by any person at any reasonable time and shall serve a copy of any representations received from persons other than the licence holder on the licence holder.

Hearings in connection with licences

31C.—(1) Where a matter or question referred to in regulation 31A(1) has been referred the Authority shall, before making a determination:

- (a) consider any representations which may have been served on it by the licence holder or any other person within the time permitted by regulation 31B(2);
- (b) consider any written submissions served pursuant to regulation 31D(3); and
- (c) conduct a hearing in accordance with regulation 31D and consider any representations made and evidence submitted at such a hearing.

(2) The following persons shall have a right to be heard at the hearing held pursuant to paragraph (1)(c):

- (a) the licence holder; and
- (b) such persons (being persons who wish to be heard and who have served representations within the time permitted by regulation 31B(2)) as appear to the Authority to be users of services provided by the licence holder or to be representative of such persons.

(3) Notwithstanding that a person does not have the right to be heard, the Authority may, if it thinks fit, hear him.

(4) No hearing shall be held pursuant to this regulation unless the Authority has served on the licence holder and any other person whom it proposes to hear in connection with the case not less than 14 days' notice of the date, time and place of the hearing, and the notice shall clearly identify the reference to which it relates: a similar notice shall be published not less than 7 days before the date of the hearing, and shall be exhibited in a public place in the Authority's principal office during the 7 days immediately preceding the date of the hearing.

Procedure at hearings

31D.—(1) Hearings shall be conducted by the Authority.

(2) At a hearing any person entitled to be heard may appear in person or be represented by any other person whom he may have authorised to represent him, and may produce oral and written evidence and may examine any other person whom the Authority hears pursuant to regulation 31C and any witnesses produced by any such person.

(3) Any person who has served a representation within the time permitted by regulation 31B(2) but who does not wish to be heard, may make a written submission which he shall serve on the Authority not less than 3 working days before the date fixed for the hearing of the case.

(4) (a) Where an oral hearing is held it shall be held in public unless, having regard to the subject matter of the hearing and any representations from the licence holder the Authority directs that the hearing or any part of the hearing shall take place in private.

(b) Nothing in this regulation shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending a hearing in his capacity as such.

(5) The failure of the Authority or of any person to give notice or publish any particulars in the time or manner provided for in the Act or in these Regulations or any other procedural irregularity shall not invalidate the action taken by the Authority; and the Authority may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching its determination to cure the irregularity, whether by the giving of notice or otherwise.

(6) (a) Subject to sub-paragraph (b) all the proceedings at a hearing of the Authority in connection with a case shall be recorded by a shorthand writer or by some other

means, and if any person requests a record of the proceedings the Authority shall cause a mechanical recording or transcript of the shorthand or other record to be made available for purchase by that person at a reasonable price.

- (b) (i) the Authority shall not be required to make available a mechanical recording or transcript of the record of the proceedings at any time after the expiry of one year from the day of publication of its determination of the case.
- (ii) A mechanical recording or transcript of the record of proceedings conducted otherwise than in public shall only be required to be made available for purchase by any person heard by the Authority at those proceedings.

Determination by Authority and Appeal to the Secretary of State

31E.—(1) Where the Authority makes a determination pursuant to this Part of these Regulations the Authority shall serve a notice of its determination and a statement of its reasons for the determination on the licence holder.

- (2) (a) Where the relevant condition of an air traffic services licence provides in respect of a matter or question that the decision of the Authority shall be definitive there shall be no appeal to the Secretary of State.
 - (b) Where the relevant condition of an air traffic services licence provides in respect of a matter or question that the licence holder may appeal to the Secretary of State, he may do so in accordance with this regulation.
- (3) (a) An appeal to the Secretary of State shall be made by a notice signed by or on behalf of the licence holder and clearly identifying the matter or question to which it relates and stating the grounds on which the appeal is based and the arguments on which the licence holder relies.
- (b) The licence holder shall serve the notice on the Secretary of State and a copy on the Authority within 14 days of receipt by the licence holder of the notice of determination and statement of reasons pursuant to paragraph (1).
- (4) The Authority shall within one calendar month after receiving notice of appeal publish such particulars of the appeal as it thinks necessary to indicate the substance of the appeal.
- (5) Within 14 days after receiving notice of an appeal, the Authority shall serve on the Secretary of State any submission it may wish to make in connection with the appeal including, if it thinks fit, an amplification and explanation of the reasons for its determination, and shall, within such period, serve a copy of any such submission on the licence holder.
- (6) Within 14 days after publication of the notice of the appeal by the Authority any person who appeared at the hearing before the Authority may serve on the Secretary of State a submission giving reasons why the Authority's determination should or should not be upheld and shall within such period serve copies of any such submission on the Authority and the licence holder.
- (7) Within 14 days after receipt of any submission made pursuant to the preceding two paragraphs the licence holder may serve on the Secretary of State a reply and shall within such period serve a copy of any such reply on the Authority.
- (8) Before deciding an appeal the Secretary of State may ask the licence holder, the Authority or any other person who appeared at the hearing held by the Authority to amplify or explain any point made by them or to answer any other question, the answer to which appears to the Secretary of State necessary to enable him to determine the appeal, and the Secretary of State shall as the case may be give the licence holder, the Authority and any other person who appeared at the hearing held by the Authority an opportunity of replying to such amplification, explanation or answer.
- (9) (a) Where any person is obliged to serve on the Authority any notice, representation, submission or other material pursuant to this regulation the Authority shall as soon as may be after receipt thereof make a copy available at its principal office for inspection by any person at any reasonable time.
- (b) The Authority shall also make a copy of any representation, submission or other material which it is obliged to serve on the licence holder or the Secretary of State pursuant to this regulation available at its principal office for inspection by any person at any reasonable time.

(10) In the appeal proceedings none of the Authority, the licence holder or any other person may submit to the Secretary of State evidence which was not before the Authority when it decided the case.

Decision by Secretary of State on appeal

31F.—(1) The Secretary of State may if he thinks fit uphold the determination of the Authority in whole or in part or reverse or vary the whole or any part of its determination.

(2) The Secretary of State shall notify the Authority and the licence holder of his decision and of the reasons for it and the Authority shall publish the Secretary of State's notification.

(3) The failure of any person (other than the licence holder in serving notice of appeal on the Secretary of State within the time prescribed in regulation 31E(3)(b)) to serve any notice, representation, submission or reply, or copies thereof or to furnish any particulars in the time or manner provided for in the Act or in these Regulations or any other procedural irregularity shall not invalidate the decision of the Secretary of State; and the Secretary of State may, and shall if he considers that any person may have been prejudiced, take such steps as he thinks fit before deciding the appeal to cure the irregularity.”

Signed by authority of the Secretary of State for Transport,
Local Government and the Regions

David Jamieson
Parliamentary Under Secretary of State,
Department of Transport, Local Government and the Regions

9th July 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations further amend the Civil Aviation Authority's Regulations 1991. The following principal changes are made:

- (1) Electronic publication by and service on the Authority is permitted (regulation 2(2), (3) and (10)).
- (2) The decisions of the Authority which are subject to review under Regulation 6 include the making of an air traffic direction under article 90A and an airspace policy direction under article 90B of the Air Navigation Order 2000(a) as amended by the Air Navigation (Amendment) Order 2001(b). A provisional air traffic direction is not subject to Regulation 6 review (regulation 2(4), (5), (6) and (8)).
- (3) A person requesting a review under Regulation 6 shall be entitled to an oral hearing. Any such hearing shall be held in public unless the Authority directs that it should be held in private (regulation 2(7)).
- (4) Reports of reportable occurrences may be made available to the provider of an air traffic control service (regulation 2(9)).
- (5) Where, pursuant to a condition of an air traffic services licence, any matter or question is referred for determination by one or more Members of the Authority, it shall be determined in accordance with the provisions of Part IIIA of these Regulations. The function of determination of questions that may arise under section 7(5) of the Transport Act 2000 is prescribed for the purposes of section 7(2) of the Civil Aviation Act 1982. Provision is also made for an appeal to the Secretary of State against a determination by the Authority (regulation 2(10)).

(a) 2000/1562.

(b) 2001/397.

STATUTORY INSTRUMENTS

2001 No. 2448**CIVIL AVIATION****The Civil Aviation Authority (Amendment) Regulations
2001**

£2.00

© Crown copyright 2001

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1392 7/2001 644648 19585

ISBN 0-11-029725-3



9 780110 297255