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STATUTORY INSTRUMENTS

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**2013 No. 486**

**CIVIL AVIATION  
CONSUMER PROTECTION**

**The Operation of Air Services in the  
Community (Pricing etc.) Regulations 2013**

<i>Made</i>	- - - -	<i>5th March 2013</i>
<i>Laid before Parliament</i>		<i>8th March 2013</i>
<i>Coming into force</i>	- -	<i>6th April 2013</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to measures relating to air transport<sup>(2)</sup>, consumer protection<sup>(3)</sup> and advertising<sup>(4)</sup>.

In exercise of the powers conferred by that section, and after consultation with the Administrative Justice and Tribunals Council in accordance with paragraph 24(1) of Part 3 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007<sup>(5)</sup>, the Secretary of State makes the following Regulations.

**PART 1**

**General**

**Citation and commencement**

**1.** These Regulations may be cited as the Operation of Air Services in the Community (Pricing etc.) Regulations 2013 and come into force on 6th April 2013.

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(1) [1972 c.68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 ([c.51](#)) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c.7](#)).

(2) [S.I. 1993/2661](#).

(3) [S.I. 1993/2661](#).

(4) [S.I. 1985/749](#).

(5) [2007 c.15](#). The Civil Aviation Authority is a “listed tribunal” for the purposes of Schedule 7 to that Act by virtue of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 ([S.I. 2007/2951](#)).

**Review**

- 2.—(1) The Secretary of State must from time to time—
- (a) carry out a review of regulations 3 to 36,
  - (b) set out the conclusions of the review in a report, and
  - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Chapter IV of the EC Regulation (which is implemented by means of regulations 3 to 36) is implemented in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the enforcement system established by regulations 3 to 36,
  - (b) assess the extent to which those objectives are achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

**Interpretation**

- 3.—(1) In these Regulations—
- “Article 23” means Article 23 of the EC Regulation;
- “the CAA” means the Civil Aviation Authority;
- “the Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)([6](#));
- “the EC Regulation” means Regulation [\(EC\) No 1008/2008](#) of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community([7](#));
- “electronic address” includes a fax number and an email address;
- “electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of an electronic communications network;
- “electronic communications network” has the meaning set out in section 32(1) of the Communications Act 2003([8](#));
- “enforcement order” is to be construed in accordance with regulation 12;
- “enforcement subject” means a person against whom an enforcement order or an interim enforcement order would be sought by an enforcer;
- “information society services”—

(6) OJ L 178, 17.07.00, p.1.

(7) OJ L 293, 31.10.08, p.3.

(8) [2003 c.21](#). Section 32(1) was amended by regulation 2(1) and paragraph 9 of schedule 1 of the Electronic Communications and Wireless Telegraphy Regulations 2011 ([S.I. 2011/1210](#)).

- (a) has the meaning set out in Article 2(a) of the Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>(9)</sup>); and
- (b) is summarised in recital 17 of the Directive which refers to “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“interim enforcement order” is to be construed in accordance with regulation 13;

“the OFT” means the Office of Fair Trading;

“recipient” means a person who (whether for professional purposes or not) uses an information society service, in particular for seeking information or making it accessible;

“service provider” means any person providing information society services.

(2) A reference in these Regulations to a document or any other thing in writing includes that document or thing in an electronic form.

## PART 2

### Enforcement of provisions on pricing

#### Enforcers

4. Each of the following is an enforcer for the purpose of enforcing Article 23—
- (a) the CAA;
  - (b) the OFT.

#### Duty to enforce

5.—(1) It is the duty of each enforcer to enforce Article 23.

(2) Nothing in these Regulations authorises an enforcer to bring proceedings in Scotland for an offence.

#### Consultation

6.—(1) An enforcer must not make an application for an enforcement order or an interim enforcement order unless it has engaged in appropriate consultation with—

- (a) the enforcement subject, and
- (b) the other enforcer.

(2) Appropriate consultation is consultation for the purpose of—

- (a) achieving the cessation of the infringement of Article 23 in a case where an infringement is occurring;
- (b) ensuring that there will be no repetition of the infringement in a case where an infringement has occurred;
- (c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under sub-paragraph (a);

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(9) OJ L 204, 21.7.1998, p.37, as amended by Directive [98/48/EC](#) of 20th July 1998 (OJ L 217, 5.8.98, p.18).

- (d) ensuring that an infringement does not take place where an enforcer believes that one is likely to take place.
- (3) Regulations 7 to 10 apply to an appropriate consultation between an enforcer and the enforcement subject.
- (4) Paragraph (1) does not apply if an enforcer thinks that an application for an enforcement order or an interim enforcement order should be made without delay.
- (5) Where paragraph (4) applies, an enforcer must notify the other enforcer of its intention to make an application for an enforcement order or an interim enforcement order without delay.
- (6) Paragraph (1) ceases to apply—
  - (a) for the purposes of an application for an enforcement order, at the end of the period of 14 days beginning with the day after the enforcement subject receives a request for consultation from the enforcer;
  - (b) for the purposes of an application for an interim enforcement order, at the end of the period of seven days beginning with the day after the enforcement subject receives a request for consultation from the enforcer.

#### **Request for consultation**

- 7. A request for consultation must be made by setting out the request in writing and—
  - (a) by delivering the request personally to a person specified in regulation 8; or
  - (b) by posting, or transmitting the request by any means of electronic communication to, or leaving it at, an address for service set out in regulation 9 appropriate to the method of communication addressed to a person specified in regulation 8.

#### **Person to whom a request for consultation is to be made**

- 8. The person to whom a request for consultation is to be addressed or delivered is—
  - (a) for an individual, that person;
  - (b) for a body corporate, a director, secretary, chief executive, treasurer, manager or other similar officer of the body corporate;
  - (c) for a limited liability partnership, any designated member as defined by section 18 of the Limited Liability Partnerships Act 2000<sup>(10)</sup>;
  - (d) for a partnership, a partner or any person having control or management of the business;
  - (e) for an unincorporated body or association, the proprietor or a person concerned in the management or control of the body or association.

#### **Address for service**

- 9. A request for consultation may be sent to one of the following addresses as appropriate—
  - (a) in the case of an individual, that person's usual or last known place of business, employment, or residence;
  - (b) in the case of a body corporate, its principal or registered office or its principal place of business;
  - (c) in the case of limited liability partnership, the address of its principal or registered office;

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<sup>(10)</sup> 2000 c.12. Section 18 cross-refers to section 8 of the Limited Liability Partnerships Act 2000 and section 8 has been amended by regulation 85 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

- (d) in the case of a partnership or an unincorporated body or association, its principal office or principal place of business;
- (e) in any case, an electronic address which the enforcement subject has held out as an address at which that person can be contacted.

### **Date of receipt of request**

**10.**—(1) A request for consultation which satisfies the requirements of regulation 7 is, unless the contrary is proved, deemed to be received as follows—

- (a) where left at an address, the next business day;
- (b) where sent by first class post, the second business day after the day on which it was posted;
- (c) where sent by second class post, the fifth business day after the day on which it was posted;
- (d) where transmitted by any means of electronic communication, the business day after the notice was transmitted over an electronic communications network; or
- (e) where delivered personally, the day it is delivered, or if delivered after 5 pm or on a day which is not a business day, the next business day.

(2) A business day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(11)</sup> in any part of the United Kingdom.

### **Applications**

**11.**—(1) An application for an enforcement order or an interim enforcement order must name the person the enforcer thinks—

- (a) has engaged, or is engaging, in conduct which constitutes an infringement of Article 23; or
- (b) is likely to engage in such conduct.

(2) An enforcer may make an application for an enforcement order or an interim enforcement order in respect of any infringement or potential infringement of Article 23.

(3) The following courts have jurisdiction to make an enforcement order or an interim enforcement order—

- (a) the High Court or a county court if the person against whom the order is sought carries on business or has a place of business in England and Wales or Northern Ireland;
- (b) the Court of Session or the sheriff court if the person against whom the order is sought carries on business or has a place of business in Scotland.

(4) An enforcer must notify the other enforcer of the result of an application under this regulation.

### **Enforcement orders**

**12.**—(1) This regulation applies if an application for an enforcement order is made under regulation 11 and the court finds that the person named in the application—

- (a) has engaged in conduct which constitutes the infringement of Article 23; or
- (b) is likely to engage in such conduct.

(2) If this regulation applies the court may make an enforcement order against the person.

(3) In considering whether to make an enforcement order the court must have regard to whether the person named in the application—

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(11) 1971 c.80.

- (a) has given an undertaking under regulation 14 in respect of conduct such as is mentioned in paragraph (3) of that regulation; and
  - (b) has failed to comply with the undertaking.
- (4) An enforcement order must—
- (a) indicate the nature of the conduct to which the finding under paragraph (1) relates, and
  - (b) direct the person to comply with paragraph (5).
- (5) A person complies with this paragraph if the person—
- (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of that person's business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of regulation 16(3)).
- (6) Paragraph (5)(a) does not apply in the case of a finding under paragraph (1)(b).
- (7) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—
- (a) the order;
  - (b) a corrective statement.
- (8) If the court makes a finding under paragraph (1), it may accept an undertaking by the person—
- (a) to comply with paragraph (5), or
  - (b) to take steps which the court believes will secure that the person complies with paragraph (5).
- (9) An undertaking under paragraph (8) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—
- (a) the terms of the undertaking;
  - (b) a corrective statement.
- (10) If the court accepts an undertaking under paragraph (8), it must not make an enforcement order in respect of the infringement to which the undertaking relates.
- (11) An enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

### **Interim enforcement orders**

- 13.—**(1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court—
- (a) that it is alleged that the person is engaged in conduct which constitutes an infringement of Article 23 or is likely to engage in such conduct;
  - (b) that if the application had been an application for an enforcement order it would be likely to be granted;
  - (c) that it is expedient that the alleged conduct is prohibited or prevented (as the case may be) expeditiously; and
  - (d) if no notice of the application has been given to the person named in the application, that it is appropriate to make an interim enforcement order without notice.
- (2) An interim enforcement order must—

- (a) indicate the nature of the alleged conduct, and
  - (b) direct the person to comply with paragraph (3).
- (3) A person complies with this paragraph if that person—
- (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of that person’s business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of regulation 16(3)).
- (4) Paragraph (3)(a) does not apply in so far as the application is made in respect of an allegation that the person is likely to engage in conduct which constitutes an infringement of Article 23.
- (5) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.
- (6) An application for an interim enforcement order must refer to all matters—
- (a) which are known to the applicant, and
  - (b) which are material to the question whether or not the application is granted.
- (7) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.
- (8) The court may vary or discharge an interim enforcement order on the application of—
- (a) an enforcer;
  - (b) the person against whom it is made.
- (9) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.
- (10) If it appears to the court as mentioned in paragraph (1)(a) to (c) that court may instead of making an interim enforcement order accept an undertaking from the person named in the application—
- (a) to comply with paragraph (3), or
  - (b) to take steps which the court believes will secure that the person complies with paragraph (3).
- (11) An interim enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

### **Undertakings to an enforcer**

**14.—**(1) This regulation applies if an enforcer has power to make an application under regulation 11.

- (2) In such a case the enforcer may accept from a person to whom paragraph (3) applies an undertaking that the person will comply with paragraph (4).
- (3) This paragraph applies to a person who the enforcer believes—
- (a) has engaged in conduct which constitutes an infringement of Article 23;
  - (b) is engaging in such conduct;
  - (c) is likely to engage in such conduct.
- (4) A person complies with this paragraph if that person—
- (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of that person’s business or another business;

- (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of regulation 16(3)).
- (5) Paragraph (4)(a) does not apply in the case of an undertaking given by a person in so far as paragraph (3) applies to that person by virtue of paragraph (3)(c).
- (6) If an enforcer accepts an undertaking under this regulation it must notify the other enforcer—
  - (a) of the terms of the undertaking; and
  - (b) of the identity of the person who gave it.

### **Further proceedings**

- 15.**—(1) This regulation applies if the court—
- (a) makes an enforcement order under regulation 12,
  - (b) makes an interim enforcement order under regulation 13, or
  - (c) accepts an undertaking under either of those regulations.
- (2) In such a case, the enforcer who did not make the application for the order has the same right to apply to the court in respect of a failure to comply with the order or undertaking as the enforcer who made the application for the order.
- (3) An application to the court in respect of a failure to comply with an undertaking may include an application for an enforcement order or for an interim enforcement order.
- (4) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order (instead of making any other order it has power to make).
- (5) In the case of an application for an enforcement order or for an interim enforcement order under paragraph (3), regulation 6 must be ignored and regulations 11 and 12 or 13 (as the case may be) apply subject to the following modifications—
- (a) regulation 11(1)(b) must be ignored;
  - (b) regulation 11(3) must be ignored and the application must be made to the court which accepted the undertaking;
  - (c) regulation 12(8) to (10) must be ignored;
  - (d) regulation 13(10) must be ignored.
- (6) If an enforcer makes an application in respect of the failure of a person to comply with an enforcement order, an interim enforcement order or an undertaking given under regulation 12 or 13, the enforcer must notify the other enforcer—
- (a) of the application; and
  - (b) of any order made by the court on the application.

### **Bodies corporate: accessories**

- 16.**—(1) This regulation applies if the person whose conduct constitutes an infringement of Article 23 is a body corporate.
- (2) If the conduct takes place with the consent or connivance of a person (an accessory) who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.
- (3) A person has a special relationship with a body corporate if that person is—
- (a) a controller of the body corporate, or
  - (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.



- (4) A person is a controller of a body corporate if—
- (a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person’s directions or instructions, or
  - (b) either alone or with an associate or associates the person is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.
- (5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.
- (6) The court may accept an undertaking under regulations 12(8), 12(9) or 13(10) from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (7) An enforcer may accept an undertaking under regulation 14 from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (8) Paragraph (9) applies if—
- (a) an order is made as mentioned in paragraph (5), or
  - (b) an undertaking is accepted as mentioned in paragraph (6) or (7).
- (9) In such a case, for regulation 12(5), regulation 13(3) or regulation 14(4) (as the case may be) there is substituted the following paragraph—
- “( ) A person complies with this paragraph if the person—
- (a) does not continue to consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of regulation 16(3)), renew such consent or repeat such connivance;
  - (b) does not in the course of that person’s business or another business engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in regulation 16(1);
  - (c) does not consent to or connive in the carrying out of such conduct by another body corporate with which the person has a special relationship (within the meaning of regulation 16(3)).”
- (10) A person is an associate of an individual if that person—
- (a) is the spouse or civil partner of the individual;
  - (b) is a relative of the individual;
  - (c) is a relative of the individual’s spouse or civil partner;
  - (d) is the spouse or civil partner of a relative of the individual;
  - (e) is the spouse or civil partner of a relative of the individual’s spouse or civil partner;
  - (f) lives in the same household as the individual otherwise than merely because that person or the individual is the other’s employer, tenant, lodger or boarder;
  - (g) is a relative or a person who is an associate of the individual by virtue of sub-paragraph(f);
  - (h) has at some time in the past fallen within any of sub-paragraphs (a) to (g).
- (11) A person is also an associate of—
- (a) an individual with whom that person is in partnership;
  - (b) an individual who is an associate of the individual mentioned in sub-paragraph (a);
  - (c) a body corporate if that person is a controller of it or is an associate of a person who is a controller of the body corporate.
- (12) A body corporate is an associate of another body corporate if—

- (a) the same person is a controller of both;
  - (b) a person is a controller of one and persons who are that person's associates are controllers of the other;
  - (c) a person is a controller of one and that person and persons who are that person's associates are controllers of the other;
  - (d) a group of two or more persons is a controller of each body corporate and the groups consist of the same person;
  - (e) a group of two or more persons is a controller of each body corporate and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom the person is an associate.
- (13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

### **Bodies corporate: orders**

**17.**—(1) This regulation applies if a court makes an enforcement order or an interim enforcement order against a body corporate and—

- (a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,
- (b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or
- (c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.

(2) The court may direct that the order is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.

(3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(4) Any two bodies corporate are interconnected—

- (a) if one of them is a subsidiary of the other, or
- (b) if both of them are subsidiaries of the same body corporate.

(5) In this regulation, “subsidiary” has the meaning given by section 1159 of the Companies Act 2006<sup>(12)</sup>.

### **Information**

**18.**—(1) An enforcer may for the purpose mentioned in paragraph (2) give notice to any person requiring the person to provide the enforcer with the information specified in the notice.

(2) The purpose is to ascertain whether a person has complied with or is complying with—

- (a) Article 23;
- (b) an enforcement order or an interim enforcement order made on the application of an enforcer;
- (c) an undertaking given under regulation 12(9) or 13(10) (as the case may be) following such an application; or
- (d) an undertaking given to an enforcer under regulation 14.

<sup>(12)</sup> 2006 c.46.

### **Notices: procedure**

- 19.**—(1) This regulation applies to a notice given under regulation 18.
- (2) The notice must—
- (a) be in writing; and
  - (b) specify the purpose for which the information is required.
- (3) A notice may specify the time within which and manner in which it is to be complied with.
- (4) A notice may require the production of documents or any description of documents.
- (5) An enforcer may take copies of any documents produced in compliance with such a requirement.
- (6) A notice may specify the form in which information is to be provided.
- (7) A notice may be varied or revoked by a subsequent notice.
- (8) A notice must not require a person to provide any information or produce any document which that person would be entitled to refuse to provide or produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege;
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (9) A notice must be given—
- (a) by delivering the notice personally to that person; or
  - (b) by posting, or transmitting the notice by any means of electronic communication to, or leaving it at, an address for service set out in paragraph (10) appropriate to the method of communication addressed to the person from whom information is being requested.
- (10) A notice may be sent to one of the following addresses as appropriate—
- (a) in the case of an individual, that person’s usual or last known place of business, employment or residence;
  - (b) in the case of a body corporate, its principal or registered office or its principal place of business;
  - (c) in the case of a limited liability partnership, the address of its principal or registered office;
  - (d) in the case of a partnership or an unincorporated body or association, its principal office or principal place of business;
  - (e) in any case, an electronic address which the person from whom information is being requested has held out as an address at which that person can be contacted.

### **Notices: enforcement**

- 20.**—(1) If a person fails to comply with a notice given under regulation 18 the enforcer who gave the notice may make an application to the court under this regulation.
- (2) If it appears to the court that the person to whom the notice was given has failed to comply with the notice the court may make an order under this regulation.
- (3) An order under this regulation may require the person to whom the notice was given to do anything the court thinks it is reasonable for that person to do for the purpose mentioned in regulation 18 to ensure that the notice is complied with.
- (4) An order under this regulation may require the person to meet all the costs and expenses of the application.

(5) If the person against whom the order is made under paragraph (2) is a body corporate or association the court may require any officer of the body corporate or association who is responsible for the failure to comply with the notice to meet the costs or expenses.

(6) If the person against whom the order is made under paragraph (2) is a limited liability partnership the court may require any designated member (as defined by section 18 of the Limited Liability Partnerships Act 2000(13)) who is responsible for the failure to comply with the notice to meet the costs and expenses.

(7) The court is a court which may make an enforcement order.

(8) In paragraph (5) an officer of a body corporate is a person who is a director, manager, secretary, or other similar officer of the body corporate.

### **Power to enter premises without warrant**

**21.**—(1) An authorised officer who reasonably suspects that there has been, or is likely to be, an infringement of Article 23 may enter any premises to investigate whether there has been, or is likely to be, such an infringement.

(2) An authorised officer who reasonably suspects that there is, or has been, a failure to comply with a relevant enforcement measure may enter any premises to investigate whether a person is complying with, or has complied with, the relevant enforcement measure.

(3) An appropriate notice must be given to the occupier of the premises before an authorised officer enters them under paragraph (1) or (2).

(4) An appropriate notice is a notice in writing given by an authorised officer which—

- (a) gives at least two working days' notice of entry on the premises;
- (b) sets out why the entry is necessary; and
- (c) indicates the nature of the offence created by regulation 25.

(5) Paragraph (3) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so.

(6) In that case, the authorised officer entering the premises must produce to any occupier that the authorised officer finds on the premises a document setting out why the entry is necessary and indicating the nature of the offence created by regulation 25.

(7) In all cases, the authorised officer entering the premises must produce to any occupier evidence of—

- (a) the authorised officer's identity; and
- (b) the authorised officer's authorisation,

if asked to do so.

(8) In this regulation—

“give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post; and

“working day” means a day which is not—

- (a) a Saturday or a Sunday; or

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(13) 2000 c.12. Section 18 cross-refers to section 8 of the Limited Liability Partnerships Act 2000 and section 8 has been amended by regulation 85 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

- (b) Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(14) in the part of the United Kingdom in which the premises are situated.
- (9) In this regulation and regulations 22 to 26—
  - “authorised officer” means an officer of an enforcer who is authorised by that enforcer for the purposes of these regulations;
  - “occupier” means any person whom the officer concerned reasonably suspects to be the occupier;
  - “premises” includes vehicles but does not include any premises which are used wholly or mainly as a dwelling; and
  - “relevant enforcement measure” means—
    - (a) an enforcement order made under regulation 12;
    - (b) an interim enforcement order made under regulation 13;
    - (c) an undertaking under regulation 12(8);
    - (d) an undertaking under regulation 13(10); or
    - (e) an undertaking under regulation 14.

#### **Powers exercisable on the premises**

- 22.**—(1) An authorised officer may in the exercise of the powers under regulation 21—
- (a) observe the carrying on of a business on the premises;
  - (b) inspect goods or documents on the premises;
  - (c) require any person on the premises to produce goods or documents within such period as the authorised officer considers to be reasonable;
  - (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out test on them elsewhere;
  - (e) seize, remove and retain goods or documents which the authorised officer reasonably suspects may be required as evidence of an infringement of Article 23 or a breach of a relevant enforcement measure.
- (2) The power in paragraph (1)(c) to require a person to produce goods or documents includes the power to require that person—
- (a) to state, to the best of that person’s knowledge and belief, where the goods or documents are;
  - (b) to give an explanation of the goods or documents; and
  - (c) to secure that any goods or documents produced are authenticated or verified in such manner as the officer considers appropriate.
- (3) An authorised officer may take copies of, or extracts from, any documents to which the authorised officer has access by virtue of paragraph (1), if the authorised officer reasonably suspects that such copies or extracts may be required as evidence of an infringement Article 23 or a breach of a relevant enforcement measure.
- (4) Nothing in this regulation authorises action to be taken in relation to anything which a person would be entitled to refuse to produce—
- (a) in proceedings in the High Court, on the grounds of legal professional privilege; or

(b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(5) The reference in paragraph (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

### **Power to enter premises with warrant**

**23.**—(1) A justice of the peace may issue a warrant authorising an authorised officer to enter premises for purposes falling within regulation 21(1) or (2) if the justice of the peace considers that there are reasonable grounds for believing that—

- (a) condition A is met; and
- (b) either condition B, C or D is met.

(2) Condition A is that there are, on the premises, goods or documents to which an authorised officer would be entitled to have access under regulations 21 and 22.

(3) Condition B is that an authorised officer acting under regulations 21 and 22 has been, or would be likely to be, refused admission to the premises or access to the goods or documents.

(4) Condition C is that the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under regulation 21.

(5) Condition D is that there is likely to be nobody at the premises capable of granting admission.

(6) A warrant under this regulation authorises the authorised officer—

- (a) to enter the premises specified in the warrant (using reasonable force if necessary);
- (b) to do anything on the premises that an authorised officer would be able to do if the authorised officer had entered the premises under regulation 21;
- (c) to search for goods or documents which the authorised officer has required a person on the premises to produce where that person has failed to comply with such a requirement;
- (d) to the extent that it is reasonably necessary to do so, to require any person to whom paragraph (7) applies to break open a container and, if that person does not comply with the requirement to break open a container, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, for the authorised officer to break open the container;
- (e) to take any other steps which the authorised officer considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which the officer would be entitled to have access under regulations 21 and 22.

(7) This paragraph applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.

(8) A warrant under this regulation—

- (a) is issued on information on oath given by an authorised officer;
- (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
- (c) must, on request, be produced to the occupier of the premises for inspection.

(9) Any reference in this regulation to goods or documents being interfered with includes a reference to them being destroyed.

(10) In its application to Scotland, this regulation has effect as if—

- (a) the references in paragraph (1) to a justice of the peace included references to a sheriff; and
- (b) the reference in paragraph (8) to information on oath were a reference to evidence on oath.

(11) In its application to Northern Ireland, this regulation has effect as if the references in paragraph (1) to a justice of the peace were references to a lay magistrate.

#### **Ancillary provisions about powers of entry**

**24.—**(1) An authorised officer who enters premises by virtue of regulation 21 may only do so at a reasonable time.

(2) An authorised officer who enters premises by virtue of regulation 21 or 23 may be accompanied by such persons and equipment as the authorised officer considers appropriate.

(3) An authorised officer who enters premises by virtue of regulation 21 or 23 must, if the premises are unoccupied or the occupier is temporarily absent, take reasonable steps to ensure that when the authorised officer leaves the premises they are as secure as they were before the authorised officer entered.

#### **Obstructing, or failing to co-operate with, powers of entry**

**25.—**(1) It is an offence for a person intentionally and without reasonable excuse—

- (a) to obstruct, or fail to co-operate with, an authorised officer who is exercising or seeking to exercise a power under regulations 21 to 24;
- (b) to withhold information requested by such an officer; or
- (c) to provide false or misleading information to such an officer.

(2) A person guilty of an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **Retention of documents and goods**

**26.—**(1) No goods or documents seized under regulations 21 to 24 may be retained for a period of more than three months unless they are reasonably required in connection with the carrying out by an enforcer of its duties under these Regulations.

(2) Where goods or documents are so required, they may be retained for as long as they are so required.

#### **Evidence**

**27.—**(1) Proceedings under these regulations are civil proceedings for the purposes of—

- (a) section 11 of the Civil Evidence Act 1968(**15**) (convictions as evidence in civil proceedings);
- (b) section 10 of the Law Reform (Miscellaneous Provision) (Scotland) Act 1968(**16**) (corresponding provision in Scotland);
- (c) section 7 of the Civil Evidence Act (Northern Ireland) 1971(**17**) (corresponding provision in Northern Ireland).

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(15) 1968 c.64. Section 11 was amended by sections 100 and 101 of the Criminal Justice Act 1991 (c.53), section 165(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), section 38 of the Armed Forces Act 2001 (c.19) and section 378(1) of the Armed Forces Act 2006 (c.52).

(16) 1968 c.70. Section 10 was amended by article 2 and paragraph 6 of Schedule 1 of the Armed Forces Act 2006 (Consequential Amendment) Order 2009 (S.I. 2009/2054) and sections 165(1) and 168(1) and paragraph 37 of Schedule 9 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6).

(17) 1971 c.36 N.I. Section 7 has been repealed in part by Schedule 1 Part IV of the Armed Forces Act 1996 (c.46), Schedule 7 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) and Schedule 7 Part I of the Armed Forces Act 2001 (c.19) and has been amended by Schedule 1 Part IV of the Armed Forces Act 1996 (c.46) and Schedule 16 of the Armed Forces Act 2006 (c.52).

(2) Paragraph (1) does not apply to proceedings for an offence under regulation 25.

## PART 3

### Information society services

#### Service providers

**28.**—(1) Paragraph (2) applies where a service provider is established in the United Kingdom.

(2) To the extent these Regulations are concerned with the enforcement of Article 23, they apply to anything done by the service provider in an EEA state (other than the United Kingdom) in providing the service as these Regulations would apply if the act in question were done by the service provider in the United Kingdom.

(3) Paragraph (4) applies where a service provider is established in an EEA state (other than the United Kingdom).

(4) To the extent these Regulations are concerned with the enforcement of Article 23, they do not apply to anything done by a service provider in providing the service.

(5) In this regulation, a service provider is “established” in an EEA state if the service provider—

- (a) effectively pursues an economic activity using a fixed establishment in that state for an indefinite period; and
- (b) is a national of an EEA state or a body mentioned in Article 54 of the Treaty on the Functioning of the European Union<sup>(18)</sup>.

(6) The presence or use in a particular place of equipment or other technical means of providing an information society service is not itself sufficient to constitute the establishment of a service provider.

(7) Where it cannot be decided from which of a number of establishments an information society service is provided, the service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.

#### Exceptions for mere conduits

**29.**—(1) An enforcer has no power to make an application under regulation 11 in respect of a service provider doing anything in the course of providing so much of an information society service as consists in—

- (a) the provision of access to an electronic communications network; or
- (b) the transmission in an electronic communications network of information provided by a recipient of the service.

(2) Paragraph (1) applies only if the service provider does not—

- (a) initiate the transmission;
- (b) select the recipient of the transmission; or
- (c) select or modify the information contained in the transmission.

(3) For the purposes of paragraph (1), the provision of access to an electronic communications network and the transmission of information in the electronic communications network includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

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(18) OJ No C83, 30.03.2010, p.47.



(4) Paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

#### **Exception for caching**

**30.**—(1) This regulation applies where an information society service consists in the transmission in an electronic communications network of information provided by a recipient of the service.

(2) An enforcer has no power to make an application under regulation 11 in respect of a service provider doing anything in connection with the automatic, intermediate and temporary storage of information so provided if—

- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in paragraph (3) is satisfied.
- (3) The condition is that the service provider—
- (a) does not modify the information;
  - (b) complies with such conditions as are attached to having access to the information; and
  - (c) (where paragraph (4) applies) expeditiously removes the information or disables access to it.
- (4) This paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network;
  - (b) access to it has been disabled; or
  - (c) a court or administrative authority has required the removal from the network of, or the disablement of access to, the information.

#### **Exception for hosting**

**31.**—(1) An enforcer has no power to make an application under regulation 11 in respect of a service provider doing anything in providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if—

- (a) the service provider had no actual knowledge when the information was provided that its provision amounted to an infringement of Article 23; or
- (b) on obtaining actual knowledge that the provision of the information amounted to an infringement of Article 23, the service provider expeditiously removed the information or disabled access to it.

(2) Paragraph (1) does not apply if the recipient of the service is acting under the authority or the control of the service provider.

## **PART 4**

### **Information**

#### **General restriction**

**32.**—(1) This regulation applies to specified information which relates to—

- (a) the affairs of an individual;
- (b) any business of an undertaking.

(2) Information is specified information if it comes to an enforcer in connection with the carrying out of its duties under these Regulations.

(3) Such information must not be disclosed—

- (a) during the lifetime of the individual, or
- (b) while the undertaking continues in existence,

unless the disclosure is permitted under this Part.

(4) Paragraph (3) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene that paragraph or any other enactment or rule of law prohibiting or restricting the disclosure of the information.

(5) Nothing in this Part authorises a disclosure of information which contravenes the Data Protection Act 1998(19).

(6) This Part does not affect any power or duty to disclose information which exists apart from this Part.

### **Consent**

**33.**—(1) Regulation 32 does not prohibit the disclosure by an enforcer of information held by it to any other person if it obtains each required consent.

(2) If the information was obtained by the enforcer from a person who had the information lawfully and the enforcer knows the identity of that person the consent of that person is required.

(3) If the information relates to the affairs of an individual the consent of the individual is required.

(4) If the information relates to the business of an undertaking the consent of the person for the time being carrying on the business is required.

(5) For the purposes of paragraph (4) consent may be given—

- (a) in the case of a body corporate by a director, secretary or other officer of the body corporate;
- (b) in the case of a partnership by a partner;
- (c) in the case of an unincorporated body or association by a person concerned in the management or control of the body or association.

### **Information sharing**

**34.**—(1) An enforcer may for any of the purposes mentioned in paragraph (3) disclose to the other enforcer any specified information.

(2) An enforcer may for any of the purposes mentioned in paragraph (3) use any specified information obtained from the other enforcer under this regulation.

(3) The purpose is to ascertain—

- (a) whether a person has complied with or is complying with Article 23;
- (b) whether a person has complied with or is complying with an enforcement order or an interim enforcement order or an undertaking given under regulations 12(8), 13(10) or 14(2) (as the case may be); or
- (c) whether further proceedings under regulation 15 should be commenced and if so, to ascertain which enforcer is to take such further proceedings.

### **Civil proceedings**

**35.**—(1) An enforcer in possession of information to which regulation 32 applies may disclose that information to any person—

- (a) for the purposes of, or in connection with, civil proceedings (including prospective proceedings) in the United Kingdom or elsewhere,
- (b) for the purposes of obtaining legal advice in relation to such proceedings, or
- (c) otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.

(2) Information disclosed under this regulation must not be used by the person to whom it is disclosed for any purpose other than those specified in paragraph (1).

### **Criminal proceedings**

**36.**—(1) An enforcer in possession of information to which regulation 32 applies may disclose that information to any person—

- (a) in connection with the investigation of any criminal offence in any part of the United Kingdom;
- (b) for the purposes of any criminal proceedings there;
- (c) for the purpose of any decision whether to start or bring to an end such an investigation or proceedings.

(2) Information disclosed under this regulation must not be used by the person to whom it is disclosed for any purpose other than that for which it is disclosed.

(3) An enforcer must not make a disclosure under this regulation unless it is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

## **PART 5**

### **Amendments**

#### **The Operation of Air Services in the Community Regulations 2009**

**37.**—(1) The Operation of Air Services in the Community Regulations 2009(20) are amended as follows.

(2) After regulation 1, insert—

#### **“Review**

**1A.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 3 to 32,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Chapters I to III of the EC Regulation (which is implemented by means of regulations 3 to 32) is implemented in the other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations,
  - (b) assess the extent to which those objectives are achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which the Operation of Air Services in the Community (Pricing etc.) Regulations 2013(21) come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”
- (3) Regulation 15 is renumbered as paragraph (1) of that regulation.
- (4) After regulation 15(1), insert—
- “(2) The provisions of Schedule 3 apply in relation to an appeal against a decision of the Secretary of State made pursuant to paragraph (1) as to whether one of the conditions in Article 13(3)(b) of the EC Regulation is fulfilled.”
- (5) Regulation 16 is renumbered as paragraph (1) of that regulation.
- (6) After regulation 16(1), insert—
- “(2) The provisions of Schedule 4 apply to the conduct and procedure of the CAA for the purposes of exercising the functions conferred on it by paragraph (1).”
- (7) After Schedule 2, insert—

“SCHEDULE 3

Regulation 15

Appeal against Secretary of State decisions under regulation 15

1. Subject to paragraphs 3 and 4, an applicant may appeal to a county court from any determination of the Secretary of State under regulation 15 as to whether one of the conditions set out in Article 13(3)(b) of the EU Regulation is fulfilled.
2. If the court is satisfied that on the evidence submitted to the Secretary of State, the Secretary of State’s determination was wrong, the court may reverse the Secretary of State’s determination and the Secretary of State must give effect to the court’s determination.
3. If the appellant resides or has a registered or principal office in Scotland the appeal may be made to the sheriff court within whose sheriffdom the appellant resides or, as the case may be, has a registered or principal office and the appeal must be brought within 21 days from the date of the Secretary of State’s determination, or within such further period as the sheriff may allow.
4. If the appellant resides or has a registered or principal office in Northern Ireland the appeal may be made to the county court held under the County Courts (Northern Ireland) Order 1980(22) for the division in which the appellant resides or, as the case may be, has a registered or principal office.
5. For the purposes of any provision relating to the time within which an appeal may be brought, the Secretary of State’s determination is deemed to have been taken on the date on which the Secretary of State furnished a statement of the reasons for the determination to the applicant for an approval for operation of an aircraft under a wet lease agreement.

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(21) S.I. 2013/486.

(22) S.I. 1980/397 (N.I. 3), to which there are amendments not relevant to these regulations.

## SCHEDULE 4

Regulation 16

### Conduct and procedure of the CAA for purposes of regulation 16

#### 1.—(1) In this Schedule—

“CAA Member” means a person appointed under section 2 of the Civil Aviation Act 1982(23) to be a member of the CAA;

“electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of an electronic communications network (within the meaning set out in section 32(1) of the Communications Act 2003(24));

“equivalent safety decision” means a decision of the CAA as to whether the condition in Article 13(3)(a) of the EC Regulation is satisfied;

“hearing” means a hearing at which oral evidence or argument may be heard and “to hear” is construed accordingly;

“lease approval” means an approval—

- (a) under regulation 17; or
- (b) under OPS 1-165 of Annex III of [Council Regulation \(EEC\) No 3922/91](#) of 16th September 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation(25).

#### (2) Any period of time specified in this Schedule by reference to days—

- (a) where such period is expressed to begin after a particular date, is to begin on the first day after that date, and is inclusive of the last day unless that day falls on a day which is not a business day, in which case the period runs to the next business day; and
- (b) where such period is expressed to run to or expire before a particular date or event, the period is to be calculated to expire on the last business day before the particular date or the date of that event.

(3) A business day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971(26).

2. A notice or other document required to be served by the CAA under this Schedule must be served in accordance with paragraph 3.

3.—(1) A notice or other document is served on a person in accordance with this paragraph if it is set out in writing and—

- (a) is delivered personally to a person specified in sub-paragraph (2); or
- (b) is delivered by posting or transmitting the notice or document by means of electronic communication to, or leaving it at, an address for service set out in sub-paragraph (3) appropriate to the method of communication addressed to the person specified in sub-paragraph (2).

(23) 1982 c.16. Section 2 was amended by section 72 of the Airports Act 1986 (c.31) and section 95 of the Civil Aviation Act 2012 (c.19).

(24) 2003 c.21. Section 32(1) was amended by regulation 2(1) and paragraph 9 of schedule 1 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210).

(25) OJ No. L 373, 31.12.91, p.4. Annex III was inserted by [Commission Regulation \(EC\) No 8/2008](#) of 11th December 2007 amending [Council Regulation \(EEC\) No 3922/91](#) as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane, OJ No. L 10, 12.1.08, p.1.

(26) 1971 c.80.

- (2) The person to whom the notice or document should be addressed or delivered is—
- (a) for an individual, that person;
  - (b) for a body corporate, a director, secretary, chief executive, treasurer, manager or other similar officer of the body corporate;
  - (c) for a limited liability partnership, any designated member as defined by section 18 of the Limited Liability Partnerships Act 2000<sup>(27)</sup>;
  - (d) for a partnership, a partner or any person having control or management of the business;
  - (e) for an unincorporated body or association, the proprietor or a person concerned in the management or control of the body or association.
- (3) Any notice or document may be sent to one of the following addresses as appropriate—
- (a) in the case of an individual, that person’s usual or last known place of business, employment or residence;
  - (b) in the case of a body corporate, its principal or registered office or its principal place of business;
  - (c) in the case of a limited liability partnership, the address of its principal or registered office;
  - (d) in the case of a partnership or an unincorporated body or association, its principal office or principal place of business;
  - (e) in any case, an electronic address which the person on whom the notice or document is to be served has held out as an address at which that person can be contacted.
- (4) An “electronic address” includes a fax number and an email address.
- 4.** A decision or proposal to grant, refuse to grant, revoke, suspend or vary a lease approval or an equivalent safety decision may be made on behalf of the CAA by a CAA employee unless paragraph 7 applies.
- 5.** If a CAA employee—
- (a) refuses an application for a lease approval,
  - (b) grants an approval but in terms other than those requested by the applicant, or
  - (c) makes an equivalent safety decision against the applicant,
- the CAA must serve on the applicant a notice stating the reasons for the decision, and the applicant may within 14 days after the date of service of that notice request that the case be reviewed by CAA Members.
- 6.** If a CAA employee proposes to revoke, suspend or vary a lease approval, the CAA must serve on the approval holder notice of the proposal together with the reasons for it, and the approval holder may within 14 days after the date of service of that notice, serve on the CAA a request that the case be decided by CAA Members.
- 7.** Where a request for a decision by the CAA Members has been served on the CAA under paragraph 5 or 6, the decision must be made by at least two CAA Members who were not involved in the original decision or proposal made by the CAA employee.
- 8.** Before making a decision the CAA Members must consider—
- (a) any brief supplied by the CAA employee responsible for the proposal or decision; and

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(27) 2000 c.12. Section 18 cross-refers to section 8 of the Limited Liability Partnerships Act 2000 and section 8 has been amended by regulation 85 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

- (b) any representations by the applicant or approval holder, served on the CAA Members within 21 days after the date of service of the notice under paragraphs 5 or 6 or such additional period as the CAA Members may determine.

**9.** Within 21 days after the date of service of the notice under paragraphs 5 or 6 the applicant or approval holder may request a hearing.

**10.** If the applicant or the approval holder has requested a hearing under paragraph 9, the CAA Members must before making a decision, conduct a hearing and consider any representations made or evidence submitted at such a hearing.

**11.—(1)** All hearings must be in public except—

- (a) where the CAA is satisfied that a private hearing is required—

- (i) in the interests of morals, public order or national security in a democratic society,
- (ii) in the interests of juveniles or the protection of the private life of the parties, or
- (iii) to the extent strictly necessary in the opinion of the CAA in special circumstances if publicity would prejudice the interests of justice; or

- (b) where the applicant or the approval holder has requested in writing that the hearing be in private and the CAA is satisfied that there is no important public interest consideration that calls for the public to be present.

(2) The CAA may decide under sub-paragraph (1) that part only of the hearing is to be in private or that information about the proceedings before the CAA, 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 a party or parties.

(3) The following persons are entitled to attend a hearing, whether or not it is in private—

- (a) a member of the Administrative Justice and Tribunals Council or of the Scottish Committee of that Council; and
- (b) any person whom the CAA, with the consent of the applicant or the approval holder permits to attend the hearing.

**12.—(1)** The CAA must serve on all persons having a right to be heard and all person whom the CAA proposes to hear at least 14 days' notice of the date, time and place of the hearing.

(2) The notice must clearly identify the matter to which it relates.

(3) A similar notice must be published not less than 7 days before the date of the hearing on the CAA's website.

(4) On the day of a hearing, a similar notice must be posted in a visible and accessible place at the venue where the hearing is scheduled to take place.

**13.** The applicant or approval holder and the CAA employee who made the decision or proposal to be reviewed have a right to be heard at the hearing.

**14.** At the hearing every person with a right to be heard may appear in person or be represented by any other person whom they have authorised to represent them and may produce oral and written evidence and the person with a right to be heard or their representative may examine any other person being heard and any witness produced by that person.

**15.** The CAA Members conducting a hearing may sit with such technical assessors to advise them as they may appoint, but the CAA Members must not appoint as an assessor any person who participated in the decision or proposal or the development of any notice or decision which is to be the subject of the hearing.

**16.** When the CAA makes a decision it must—

- (a) serve notice of the decision and a statement of its reasons for the decision on the applicant or approval holder; and
- (b) publish the decision and a statement of its reasons for the decision.

17. Paragraphs 5 and 6 do not apply where the CAA refuses to grant an approval or grants an approval in terms other than those requested by the applicant or proposes to vary, suspend or revoke an approval pursuant to a direction given by the Secretary of State under section 6 of the Civil Aviation Act 1982<sup>(28)</sup> (Secretary of State’s directions in national interest, etc.).”

## PART 6

### Revocation

#### **The Licensing of Air Carriers Regulations 1999**

38. The Licensing of Air Carriers Regulations 1999<sup>(29)</sup> are revoked.

Signed by authority of the Secretary of State

5th March 2013

*Simon Burns*  
Minister of State  
Department for Transport

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<sup>(28)</sup> 1982 c.16. Section 6 was amended by section 97 of the Transport Act 2000 (c.38).

<sup>(29)</sup> S.I. 1999/2245.



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for implementing Chapter IV of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.08, p.3). These Regulations also amend the Operation of Air Services in the Community Regulations 2009 and revoke the Licensing of Air Carriers Regulations 1999.

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Article 24 of the EC Regulation requires the member States to ensure compliance with the rules set out in Chapter IV and lay down penalties for infringements of those rules. Regulations 3 to 36 provide for an enforcement system to meet this obligation.

Regulation 4 specifies the CAA and the OFT as enforcers for the purpose of enforcing Article 23 of the EC Regulation.

The enforcement regime provides for—

- (a) power for the courts to make an enforcement order on application of an enforcer: regulation 12;
- (b) power for the courts to make an interim enforcement order on application of an enforcer: regulation 13;
- (c) power for an enforcer to accept an undertaking instead of seeking an enforcement order: regulation 14;
- (d) further proceedings to be taken by an enforcer following breach of an undertaking, enforcement order or an interim enforcement order: regulation 15;
- (e) power for enforcers to seek information for the purpose of ascertaining whether there is an infringement of Article 23 or whether a person has complied with an order: regulation 18;
- (f) power for officers of an enforcer to enter premises with or without warrant: regulations 21, 23 and 24;
- (g) power for officers of an enforcer to observe the business and inspect goods and documents on the premises, to require the production of goods or documents, to seize goods or documents, and to seize, remove and retain goods and documents: regulations 22.

Regulation 25 creates a new criminal offence of obstructing or failing to cooperate with powers of entry.

Regulations 28 to 31 make provision so that the Regulations do not conflict with the requirements of European Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society service, in particular electronic commerce in the Internal Market (OJ L 178, 17.07.2000, p.1), known as the E-Commerce Directive. Regulation 28 provides that where a service provider is established in the United Kingdom, to the extent these Regulations are concerned with the enforcement of Article 23, they apply to anything done by that service provider in providing the information society service in another EEA state. It also provides

**Status:** This is the original version (as it was originally made).

that where the service provider is established in an EEA state other than the United Kingdom, they do not apply to anything done by the service provider in providing the information society service. Regulations 29 to 31 provide for various exceptions in respect of intermediary internet service providers in accordance with Articles 12 to 14 of the E-Commerce Directive.

Regulations 32 to 36 provide for sharing of information between enforcers and for disclosure of information with consent, and for the purpose of civil and criminal proceedings.

Regulation 37 amends the Operation of Air Services in the Community Regulations 2009 by adding a requirement for the Secretary of State to review the operation and effect of those regulations and to publish a report within five years after such requirement comes into force and within every five years after that. Regulation 37 also provides for appeal procedures in respect of decisions of the Secretary of State and the CAA relating to approvals for leased aircraft pursuant to regulations 15 and 16 of the 2009 regulations.

The Licensing of Air Carriers Regulations 1999 are revoked: regulation 38. The process set out in the 1999 regulations is replaced by the procedure set out in regulation 37.

An impact assessment of the effect that the instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). A copy has also been placed in the Library of each House of Parliament.