

CAA Strategy and Policy

Ms Tamara Goodwin
Senior Air Services Negotiator
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30 June 2017

Dear Tamara

APPLICATION BY BRITISH AIRWAYS PLC TO LEASE FOREIGN-REGISTERED AIRCRAFT

1. Thank you for your email of 20 June 2017 asking us to provide advice as to whether this application complies with Article 13.3 of Regulation 1008/2008. Details of the application and our reasoning are set out below.

Applicant: British Airways plc *Lessor:* Qatar Airways

Aircraft: Nine Airbus A320, registrations A7-LAA, A7-ADA, A7-ADB, A7-ADC, A7-ADD, A7-ADE, A7-ADF, A7-ADG and A7-ADI

Type of lease: Wet

Duration of lease: 1 July to 16 July 2017 inclusive, and for additional periods, yet to be defined, for a maximum of two months.

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Objections/representations

2. The period for objections or representations is currently open and runs until 5 July 2017. Given the proposed start date of 1 July 2017, the Department asked the CAA to give a preliminary view on this application on an expedited basis. We have so far received comments on the application from 17 stakeholders, which have been copied to the Department.

EU Regulation 1008/2008

3. Article 13.3 of Regulation 1008/2008 states that "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." It then sets out the conditions which must be met for the competent authority to grant an approval.

Civil Aviation Authority

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4. Article 13.3(a) relates to safety and requires the Community air carrier to demonstrate to the satisfaction of the competent authority that all safety standards equivalent to those imposed by Community or national law are met. I confirm that the CAA is satisfied in this respect.

5. We are forwarding to the Department the CAA's lease approvals issued under the EASA Air Operations Regulation 965/2012, an exemption under Article 14.4 of Regulation 216/2008 from the need for third-country pilot licence validations under Annex III of the EASA Aircrew Regulation 1178/2011, and the CAA's foreign carrier permit issued under Article 250 of UK Air Navigation Order 2016. Qatar Airways already holds a CAA foreign carrier permit in respect of its UK/Qatar services and an EASA Third Country Operator certificate.

6. Article 13.3(b) requires that one of three conditions must be fulfilled for a Community air carrier to use a wet-leased aircraft registered in a third country. In this case BA states that the application conforms with condition (i) in that the lease is justified on the basis of exceptional needs to enable BA to continue passenger operations in light of planned operational disruption by its Mixed Fleet cabin crew.

Operation of Air Services in the Community Regulations 2009:

7. In accordance with Regulation 15, the Secretary of State is the competent authority for the purpose of granting an approval under Article 13.3 of Regulation 1008/2008, for determining whether one of the conditions set out in Article 13.3(b) is fulfilled, and for the purposes of Article 13.4. In accordance with Regulation 16, the CAA is the competent authority for the purpose of determining whether the safety standards set out in Article 13.3(a) are met.

Reciprocity

8. The Department confirmed in its email of 20 June 2017 that it did not intend to refuse this application on the grounds of a lack of reciprocity with Qatar (Article 13.4 of Regulation 1008/2008).

Background

9. BA services may be affected by proposed industrial action by Mixed Fleet Unite cabin crew between 1 July and 16 July inclusive. Although this is not the first occasion that there has been industrial action during this dispute, we understand that on earlier occasions BA has wet leased aircraft solely from within the EU. Because Regulation 1008/2008 states that EU carriers may freely operate wet leased aircraft registered within the EU except where this would lead to endangering safety, the procedure followed for those wet leases was different from the case now under consideration.

10. The proposed industrial action takes place in a peak seasonal period when it is more difficult to lease in alternative capacity, and BA states that it has not been able to secure sufficient aircraft from within the EU. We understand that BA has been updating the Department on the latest position in this respect. The impact of a cancellation on consumers is also compounded by the higher load factors in the peak season, meaning that fewer alternative seats are available.

11. As explained above, for a Community air carrier to use a wet-leased aircraft registered in a third country, in addition to the applicant satisfying the CAA on safety requirements, the Regulation requires that one of the three conditions must be fulfilled.