

CAA Strategy and Policy

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14 July 2017

Dear Tamara

APPLICATION BY BRITISH AIRWAYS PLC TO LEASE FOREIGN-REGISTERED AIRCRAFT

1. Thank you for your email of 10 July 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: 17 July to 1 August 2017 inclusive, an extension of a previous wet lease of the same aircraft from 1 July to 16 July 2017.

Publication in CAA Official Record series 2: 7 July 2017

Objections/representations

2. The period for objections or representations ran until midnight on 13 July 2017. We have received comments on the application from six 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.

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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. BA states that the application is in relation to the same aircraft and on the same terms as that which has been approved (subject to all necessary changes in relation to dates and flights to be flown), and subject to the same conditions as have been imposed by the CAA and Secretary of State for Transport in relation to that wet lease.

7. BA states that it seeks approval of this wet lease in order to minimise the significant impact on the consumer that would otherwise occur by reason of cancellation and delay due to the unavailability of Mixed Fleet cabin crew members of Unite.

Operation of Air Services in the Community Regulations 2009

8. 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

9. The Department confirmed in its email of 10 July 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

10. I refer to my letter of 30 June 2017 concerning the previous period of industrial action by Mixed Fleet Unite cabin crew between 1 July and 16 July 2017. BA has now applied for a wet lease between 17 July and 1 August inclusive to cover a further period of industrial action between 19 July and 1 August inclusive.¹

11. Although this is not the first occasion that there has been industrial action during this dispute, we understand that on earlier occasions prior to July 2017 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

¹ BA's original application stated that the industrial action covered the period 17 July to 31 July 2017, but BA amended this by email on 11 July 2017 attributing the change to a "notification error" which we understand was an error within BA itself.

would lead to endangering safety, the procedure followed for those wet leases was different from the case now under consideration.

12. As with the previous application, the proposed industrial action takes place in a peak seasonal period (now including school summer holidays) when it is more difficult to lease in alternative capacity from an EU carrier. BA states that it has again sought to secure aircraft capacity for the period in question from EU operators. It has established that one EU operator has availability for a total of nine days within this period, but BA says this is not continuous and does not fulfil its operational need. BA says there is no availability from other EU carriers. BA says that the lack of adequate EU aircraft for lease over this period is the only reason that this application is being made.

13. The impact of cancellations on consumers is also compounded by the higher load factors in the peak season, meaning that fewer alternative seats are available. This would become cumulative as the disruption period continues, with further cancellations impacting greater numbers of passengers and even further reduced availability.

14. BA's application to wet lease the nine Qatar Airways aircraft also covers the period 17 to 18 July 2017. It therefore runs consecutively from the previous period. But no industrial action is planned for those two days.

15. BA originally stated that it had included the period 17 to 18 July 2017 in the proposed lease period:

"...because the removal of Qatar Airways from the operation at the expiry of the currently approved wet lease and its re-introduction only on the commencement of the further strike action on 19 July, presents British Airways with both operational and safety risks that will be avoided if it is able to utilise wet lease cover to bridge this gap. In order for British Airways to minimise these risks at this time of year, when the aviation infrastructure is subject to high numbers of movements, passengers and restrictions throughout Europe, it is proposed that British Airways continues to utilise Qatar Airways in this period."

16. BA subsequently submitted an amended justification for including these two days in the lease period. BA advised us on 12 July that it

"...is not looking to cover the Interim Disruption Period 17th and 18th July with Qatar operated aircraft. However, at this time it is not clear as to how many mixed fleet cabin crew staff will report for duty and therefore it is important that we are in a position to be able to provide as full a schedule as possible and to be able to continue flying our passengers to their destinations. Therefore the requirement to have the Qatar operated aircraft available for use is still a priority all be it in a standby capacity over the two day period".

CAA leasing procedures

17. The proposed lease is an extension of an existing lease, and the total period exceeds one month. The CAA's standard procedure for non-EU lease applications therefore applies.

18. Where a leasing application needs to be determined more quickly than our 'standard' procedure would allow (i.e. allowing 10 working days for objections or representations), the CAA adjusts the period of time for submission of comments on a case-by-case basis. In each case the CAA will identify a period that is, in its reasonable opinion, appropriate.