

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

CAP 1591

1008/2008

Published by the Civil Aviation Authority, 2017

Civil Aviation Authority
Aviation House
Gatwick Airport South
West Sussex
RH6 0YR

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First published September 2017

The latest version of this document is available in electronic format at: www.caa.co.uk

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1. OVERVIEW

1.1 Introduction

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

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

1.2 Decision to revoke an operating licence

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

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

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

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

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

¹ Regulation 7(2) of the UK Regulations.

2. LEGAL FRAMEWORK

2.1 The UK Regulations

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

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

2.2 The European Regulations

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

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

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

The Test

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

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

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

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

² Regulation 5 of the UK Regulations

2.3 The Human Rights Act

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

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

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

2.4 Official Record Series 1 (ORS1)

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

3. PROCEDURE

3.1 Key roles

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

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

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

If the licence holder requests a hearing, CMG will:

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

3.1.3 Role of the Hearing Manager

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

3.1.4 Role of the CAA Panel Lawyer

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

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

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

3.1.5 The role of the CMG Lawyer

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

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

3.2.1 The proposal

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

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

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

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

3.2.2 The proposal letter

The proposal letter from CMG must include the following –

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

The proposal letter should also include the following —

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

3.2.3 Written representations

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

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

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

3.2.4 Extensions of time

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

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

3.2.5 CAA Panel may request additional information

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

4. PREPARING FOR A HEARING

4.1 Details of the hearing

4.1.1 Holding a hearing

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

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

4.1.2 Date of the hearing

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

4.1.3 Venue of the hearing

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

4.1.4 Additional material

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

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

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

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

4.1.5 The hearing bundle

The hearing bundle will comprise one or more of—

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

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

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

4.1.6 Legal representation

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

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

4.1.7 Interpreters

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

4.1.8 Vulnerable persons

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

4.1.9 Attending the hearing

A hearing may be attended by—

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