STATUTORY INSTRUMENTS

# 1971 No. 1135

# CIVIL AVIATION

## The Civil Aviation (Navigation Services Charges) Regulations 1971

| | |
|---|---|
| *Made* - - - - | 13*th July* 1971 |
| *Laid before Parliament* | 22*nd July* 1971 |
| *Coming into Operation* | 30*th July* 1971 |

The Secretary of State in exercise of his powers under sections 4 and 7 of the Civil Aviation (Eurocontrol) Act 1962(a) and section 15(4) of the Civil Aviation Act 1968(b) and of all other powers enabling him in that behalf, and with the consent of the Treasury in respect of Regulations 5, 6 and 7 hereby makes the following Regulations:

*Citation and Operation*

**1.** These Regulations may be cited as the Civil Aviation (Navigation Services Charges) Regulations 1971 and shall come into operation on 30th July 1971.

*Interpretation*

**2.**—(1) In these Regulations:

"aircraft documents", in relation to any aircraft, means any certificate of registration, maintenance or airworthiness of that aircraft, any log book relating to the use of that aircraft or its equipment and any similar document;

"airport charges" means charges payable to a person owning or managing an aerodrome in the United Kingdom to which section 14 of the Civil Aviation Act 1968 or any enactment of the Parliament of Northern Ireland containing provisions corresponding to that section for the time being applies for the use of, or for services provided at, the aerodrome but does not include charges payable by virtue of these Regulations;

"operator", in relation to an aircraft, means the person who, at the relevant time, has the management of that aircraft;

"the 1962 Act" means the Civil Aviation (Eurocontrol) Act 1962;

"the court" means, as respects England and Wales, the High Court, as respects Scotland, the Court of Session; and, as respects Northern Ireland, the High Court of Justice in Northern Ireland;

(a) 1962 c. 8. (b) 1968 c. 61.

"maximum total weight authorised" means, in relation to an aircraft, the maximum total weight of the aircraft and its contents at which the aircraft may take off in the United Kingdom in the most favourable circumstances in accordance with the certificate of airworthiness for the time being in force in respect of the aircraft; however, if that certificate indicates a maximum total weight at which the aircraft may taxi, that weight shall be taken to be the maximum total weight authorised;

"the specified amount" means, in relation to a landing or take-off, the additional cost incurred by the Secretary of State in providing navigation services by reason of the landing or take-off, as the case may be, being made outside hours;

"the standard charge" means—

(*a*) in the case of an aircraft other than a helicopter, for each complete 1,000 lb. of the maximum total weight authorised of the aircraft in respect of which the charge is made, and for each fraction of 1,000 lb. not being less than 500 lb., a charge

(i) for services provided in connection with the use of Heathrow—London, Gatwick—London, Stansted—London or Prestwick aerodromes, of 15 new pence;

(ii) for services provided in connection with the use of any of the other aerodromes referred to in Regulation 4, of 22½ new pence;

(*b*) in the case of a helicopter, a charge equal to one half of the amount which, in the circumstances, would be the standard charge in the case of an aircraft other than a helicopter;

"within hours" means within the notified hours of watch of the air traffic control unit at the aerodrome, and "outside hours" shall be construed accordingly.

(2) Expressions used in these Regulations shall unless the context otherwise requires have the same respective meanings as in the Air Navigation Order 1970(**a**) as amended (**b**).

(3) The Interpretation Act 1889(**c**) shall apply for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

*Revocation*

**3.**—(1) Subject to paragraph (2) of this Regulation, the Civil Aviation (Navigation Services Charges) Regulations 1964(**d**), the Civil Aviation (Navigation Services Charges) (Amendment) Regulations 1966(**e**), the Civil Aviation (Navigation Services Charges) (Second Amendment) Regulations 1968(**f**) and the Civil Aviation (Navigation Services Charges) (Third Amendment) Regulations 1969(**g**) are hereby revoked.

(2) Section 38(2) of the Interpretation Act 1889 (which relates to the effect of repeals) shall apply to these Regulations as if these Regulations were an Act of Parliament and as if the Regulations revoked by paragraph (1) of this Regulation were Acts of Parliament thereby repealed.

(**a**) S.I. 1970/954 (1970 II, p. 2964).
(**b**) There is no relevant amending instrument.
(**c**) 1889 c. 63.
(**d**) S.I. 1964/1071 (1964 II, p. 2367).
(**e**) S.I. 1966/465 (1966 I, p. 982).
(**f**) S.I. 1968/423 (1968 I, p. 1109).
(**g**) S.I. 1969/510 (1969 I, p. 1414).

*Aerodromes in respect of which charges are payable*

**4.** The charges imposed by these Regulations shall be payable in respect of services provided at the following aerodromes, namely, Heathrow—London, Gatwick—London, Stansted—London, Prestwick, Aberdeen (Dyce), Belfast (Aldergrove), Birmingham, Bournemouth (Hurn), Edinburgh, Glamorgan (Rhoose), Glasgow, Liverpool and Manchester.

*Charges for navigation services*

**5.**—(1) Subject to the provisions of these Regulations, the operator of every aircraft for which navigation services are provided by the Secretary of State in connection with the use of an aerodrome referred to in Regulation 4 of these Regulations (whether or not the services are actually used or could be used with the equipment installed in the aircraft) shall pay to the Secretary of State for those services on the occasion specified in the first column of the following table the charges specified in relation to those occasions in the second column thereof:—

TABLE

| | |
|---|---|
| (*a*) Upon each landing of the aircraft at that aerodrome within hours ... | the standard charge |
| (*b*) Upon each landing of the aircraft at that aerodrome outside hours ... | the standard charge surcharged by 75%, (in the case of a helicopter by 150%) or by the specified amount, whichever is the greater. |
| (*c*) Upon each take-off of the aircraft at that aerodrome outside hours, being either | |
| (i) a take-off which does not take place within 1 hour of landing or | |
| (ii) a take-off which takes place within 1 hour of a landing made within hours ... ... | the specified amount or 75% of the standard charge (in the case of a helicopter 150%) whichever is the greater. |

(2) Where on the occasion of any landing or take-off (as the case may be) the shortest distance in the case of a landing between the aerodrome of departure and the aerodrome of landing and in the case of a take-off between the aerodrome of departure and the aerodrome of intended landing does not exceed 115 miles measured along the great circle, for the references to "the standard charge" in the Table in paragraph (1) of this Regulation there shall be substituted references to "half the standard charge".

(3) Where the flight of an aircraft taking off or landing, as the case may be, is a flight to or from a place outside the United Kingdom, Channel Islands and the Isle of Man, or a flight which is part of a through journey of the aircraft to or from a place outside those countries, for the references to "the standard charge" in paragraphs (1) and (2) of this Regulation there shall be substituted references to "112½% of the standard charge".

*Services provided outside hours where the intention to land or take-off is not carried out*

**6.** Whenever, by reason of his having received from the operator or commander of an aircraft notice of intention to make use outside hours of an aerodrome referred to in Regulation 4 of these Regulations for landing or take-off or as an alternate aerodrome, the Secretary of State provides navigation services outside hours but the aircraft does not land or take-off there on the occasion specified in the notice, the operator of the aircraft shall pay, in respect of each such aerodrome—

(*a*) in the case of an intended landing or intended use of the aerodrome as an alternate aerodrome, an amount equal to the surcharge payable under Regulation 5 of these Regulations on the landing of the aircraft outside hours;

(*b*) in the case of an intended take-off, an amount equal to the charge, if any, which would have been payable under Regulation 5 of these Regulations if the aircraft had actually taken off outside hours at the intended time;

Provided that a charge shall not be payable under this Regulation if the notice of intention is cancelled not less than 30 minutes before the end of the last period of watch within hours before the time specified in the notice for landing or for the intended use of the aerodrome as an alternate aerodrome or for take-off, as the case may be.

*Dispensations*

**7.** The Secretary of State may dispense wholly or in part with any charge payable under Regulations 5 and 6 of these Regulations, if he determines that it is proper to do so, having regard to all the circumstances of the case.

*Detention and sale of aircraft for unpaid charges*

**8.** Where default is made in the payment of charges incurred in respect of any aircraft under these Regulations, the Secretary of State or an authorised person may, subject to the provisions of this and the following Regulations take such steps as are necessary to detain, pending payment, either—

(*a*) the aircraft in respect of which the charges were incurred (whether or not they were incurred by the person who is the operator of the aircraft at the time when the detention begins); or

(*b*) any other aircraft of which the person in default is the operator at the time when the detention begins;

and if the charges are not paid within 56 days of the date when the detention begins, the Secretary of State may sell the aircraft in order to satisfy the charges.

**9.** The Secretary of State or the authorised person concerned shall not detain, or continue to detain, an aircraft under these Regulations by reason of any alleged default in the payment of charges payable under these Regulations if the operator of the aircraft or any other person claiming an interest therein—

(*a*) disputes that the charges, or any of them, are due or, if the aircraft is detained under Regulation 8(*a*) of these Regulations, that the charges in question were incurred in respect of that aircraft; and

(*b*) gives to the Secretary of State, pending the determination of the dispute, sufficient security for the payment of the charges which are alleged to be due.

**10.** The Secretary of State shall not sell an aircraft under these Regulations without the leave of the court; and the court shall not give leave except on proof that a sum is due to the Secretary of State for charges under these Regulations, that default has been made in the payment thereof and that the aircraft which the Secretary of State seeks leave to sell is liable to sale under these Regulations by reason of the default.

**11.** The Secretary of State shall, before applying to the court for leave to sell an aircraft under these Regulations, take such steps for bringing the proposed application to the notice of interested persons and for affording them an opportunity of becoming a party to the proceedings as are set forth in the Schedule to these Regulations. If such leave is given, the Secretary of State shall secure that the aircraft is sold for the best price that can reasonably be obtained; but failure to comply with any requirement of this Regulation or of the said Schedule in respect of any sale, while actionable as against the Secretary of State at the suit of any person suffering loss in consequence thereof, shall not, after the sale has taken place, be a ground for impugning its validity.

**12.** The proceeds of any sale under these Regulations shall be applied as follows, and in the following order, that is to say:—

(*a*) in payment of any customs duty or purchase tax which is due in consequence of the aircraft having been brought into the United Kingdom;

(*b*) in payment of the expenses incurred by the Secretary of State in detaining, keeping and selling the aircraft, including his expenses in connection with the application to the court;

(*c*) in payment of any airport charges incurred in respect of any aircraft which are due from the operator of the aircraft to the person owning or managing the aerodrome at which the aircraft was detained under these Regulations;

(*d*) in payment of any charge in respect of the aircraft which is due by virtue of these or any other Regulations under section 4 of the 1962 Act

and the surplus, if any, shall be paid to or among the person or persons whose interests in the aircraft have been divested by reason of the sale.

**13.** The power of detention and sale conferred by these Regulations in respect of an aircraft extends to the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator, and references to the aircraft in Regulations 9 to 12 of these Regulations include, except where the context otherwise requires, references to any such equipment and stores.

**14.** The power of detention conferred by these Regulations in respect of an aircraft extends to any aircraft documents carried in it, and any such documents may, if the aircraft is sold under these Regulations, be transferred by the Secretary of State to the purchaser.

**15.** The power conferred by these Regulations to detain an aircraft in respect of which charges have been incurred may be exercised on the occasion on which the charges have been incurred or on any subsequent occasion when the aircraft is on the aerodrome in respect of which those charges were incurred or on any other aerodrome owned or managed by the Secretary of State or on which the Secretary of State provides the navigation services.

**16.** Nothing in these Regulations shall prejudice any right of the Secretary of State to recover any charges, or any part thereof, by action.

*Michael Noble,*
Minister for Trade,
Department of Trade and Industry.

13th July 1971.

We consent to the making of these Regulations.

*Bernard Weatherill,*
*P. L. Hawkins,*
Lords Commissioners of Her Majesty's Treasury.

13th July 1971.

## SCHEDULE

*Steps to be taken to bring proposed application to court to notice of interested persons and afford them an opportunity of becoming a party to the proceedings.*

1. The Secretary of State, if he proposes to apply to the court for leave to sell an aircraft under these Regulations, shall take such of the following steps for bringing the proposed application to the notice of persons whose interests may be affected by the determination of the court thereon and for affording to any such person an opportunity of becoming a party to the proceedings on the application as are applicable to the aircraft:

(1) At least 21 days before applying to the court, the Secretary of State shall publish:

(i) in the London Gazette and also, if the aircraft is detained in Scotland, in the Edinburgh Gazette, or, if it is detained in Northern Ireland, in the Belfast Gazette; and

(ii) in one or more local newspapers circulating in the locality in which the aircraft is detained;

such a notice as is prescribed by paragraph 2 of this Schedule, and shall also, unless in that case it is impracticable to do so, serve such a notice, in the manner so prescribed, on each of the following persons:

(*a*) the person in whose name the aircraft is registered;

(*b*) the person, if any, who appears to the Secretary of State to be the owner of the aircraft;

(*c*) any person who appears to the Secretary of State to be a charterer of the aircraft whether or not by demise;

(*d*) any person who appears to the Secretary of State to be the operator of the aircraft;

(*e*) H P Information Ltd., being a company incorporated under the Companies Act 1948(a);

(a) 1948 c. 38.

(*f*) any person who is registered as a mortgagee of the aircraft under an Order in Council made under section 16 of the Civil Aviation Act 1968 or who appears to the Secretary of State to be a mortgagee of the aircraft under the law of any country other than the United Kingdom;

(*g*) any other person who appears to the Secretary of State to have a proprietary interest in the aircraft.

(2) If any person who has been served with a notice in accordance with sub-paragraph (1) of this paragraph informs the Secretary of State in writing within 14 days of the service of the notice of his desire to become a party to the proceedings the Secretary of State shall make that person a defendant to the application.

2. *Content and service of the notice under paragraph* 1

(1) A notice under paragraph 1 of this Schedule shall—

(*a*) state the nationality and registration marks of the aircraft;

(*b*) state the type of aircraft;

(*c*) state that by reason of default in the payment of a sum due to the Secretary of State for charges imposed by these Regulations, the Secretary of State, on a date which shall be specified in the notice, detained the aircraft under these Regulations and, unless payment of the sum so due is made within a period of 56 days from the date when the detention began, or within 21 days of the date of service of the notice, whichever shall be the later, will apply to the court for leave to sell the aircraft;

(*d*) invite the person to whom the notice is given to inform the Secretary of State within 14 days of the service of the notice if he wishes to become a party to the proceedings on the application.

(2) A notice under paragraph 1 of this Schedule shall be served—

(*a*) by delivering it to the person to whom it is to be sent; or

(*b*) by leaving it at his usual or last known place of business or abode; or

(*c*) by sending it by post in a prepaid registered letter, or by the recorded delivery service, addressed to him at his usual or last known place of business or abode; or

(*d*) if the person to whom it is to be sent is an incorporated company or body, by delivering it to the secretary, clerk or other appropriate officer of the company or body at their registered or principal office, or sending it by post in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary, clerk or officer of the company or body at that office.

(3) Any notice which is sent by post in accordance with the preceding paragraph to a place outside the United Kingdom shall be sent by air mail or by some other equally expeditious means.

## EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations revoke the Civil Aviation (Navigation Services Charges) Regulations 1964, as amended. They reproduce with minor and drafting amendments the substance of Regulations 1 to 7 of the 1964 Regulations as amended, and include, in relation to aircraft detained for non-payment of charges, provisions corresponding to those in section 14 of the Civil Aviation Act 1968 and the Regulations made thereunder.

The main new provisions are as follows:—

(1) Power is conferred on the Secretary of State to sell the aircraft if the charges are not paid within 56 days of the date when the detention begins (Regulation 8).

(2) The Secretary of State is precluded from detaining the aircraft if the charges are disputed and sufficient security is given to him (Regulation 9).

(3) The Secretary of State is prohibited from selling an aircraft without the leave of the court (Regulation 10) and is required, before applying to the court for leave to sell an aircraft, to take specified steps for bringing the proposed application to the notice of interested persons and for affording such persons an opportunity of becoming a party to the proceedings (Regulation 11).

(4) The Secretary of State is required to secure that the aircraft is sold for the best price that can reasonably be obtained (Regulation 11), and to apply the proceeds of sale in a prescribed manner (Regulation 12).