

STATUTORY INSTRUMENTS

1991 No. 1672

The Civil Aviation Authority Regulations 1991

[^{F1}PART IIIA

REFERENCES IN RESPECT OF AN AIR TRAFFIC SERVICES LICENCE

Textual Amendments

- F1** Pt. 3A inserted (31.7.2001) by [The Civil Aviation Authority \(Amendment\) Regulations 2001 \(S.I. 2001/2448\)](#), regs. 1, 2(**10**)

Determination by the Authority

31A.—(1) Where, pursuant to a condition of an air traffic services licence, any matter or question may be referred for determination by one or more Members of the Authority pursuant to these Regulations and such a matter or question is referred, it shall be determined in accordance with the provisions of this Part of these Regulations.

(2) The function of the Authority under section 7(5) of the Transport Act 2000 with respect to the modification of a licence, to the extent it gives rise to a matter or question referred for determination by one or more members of the Authority, is hereby prescribed for the purpose of section 7(2) of the Act.

(3) For the purpose of making any determination in such a case a quorum of the Authority shall be two Members.

(4) The Authority shall sit with such technical assessors to advise it as the Authority may appoint, but the Authority shall not appoint as an assessor any person who participated in the development of any notice or counter-notice in relation to the matter or question to be determined.

(5) For the purposes of this Part of these Regulations:

- (a) “an air traffic services licence” means a licence granted pursuant to section 6 of the Transport Act 2000;
- (b) where the Authority is required to publish any information it may do so electronically or otherwise;
- (c) where the Authority is required to make any information available at its principal office for inspection it may do so electronically or otherwise;
- (d) anything which is required to be served on the Authority may be served electronically by sending it to an e-mail address which it has published for the purpose or in accordance with regulation 4.

Representations

31B.—(1) The Authority shall within one calendar month after a reference has been made serve notice of the reference on the licence holder and publish such particulars of the reference as it thinks

necessary for indicating the substance of the reference, and shall make a copy of the reference available at its principal office for inspection by any person at any reasonable time.

(2) The licence holder or any other person may serve on the Authority a representation about a reference if he does so within 21 days of, in the case of the licence holder the date of service of notice or, in the case of any other person, publication of the reference by the Authority.

(3) The Authority shall make a copy of any representation which has been served on the Authority available at its principal office for inspection by any person at any reasonable time and shall serve a copy of any representations received from persons other than the licence holder on the licence holder.

Hearings in connection with licences

31C.—(1) Where a matter or question referred to in regulation 31A(1) has been referred the Authority shall, before making a determination:

- (a) consider any representations which may have been served on it by the licence holder or any other person within the time permitted by regulation 31B(2);
- (b) consider any written submissions served pursuant to regulation 31D(3); and
- (c) conduct a hearing in accordance with regulation 31D and consider any representations made and evidence submitted at such a hearing.

(2) The following persons shall have a right to be heard at the hearing held pursuant to paragraph (1)(c):

- (a) the licence holder; and
- (b) such persons (being persons who wish to be heard and who have served representations within the time permitted by regulation 31B(2)) as appear to the Authority to be users of services provided by the licence holder or to be representative of such persons.

(3) Notwithstanding that a person does not have the right to be heard, the Authority may, if it thinks fit, hear him.

(4) No hearing shall be held pursuant to this regulation unless the Authority has served on the licence holder and any other person whom it proposes to hear in connection with the case not less than 14 days' notice of the date, time and place of the hearing, and the notice shall clearly identify the reference to which it relates: a similar notice shall be published not less than 7 days before the date of the hearing, and shall be exhibited in a public place in the Authority's principal office during the 7 days immediately preceding the date of the hearing.

Procedure at hearings

31D.—(1) Hearings shall be conducted by the Authority.

(2) At a hearing any person entitled to be heard may appear in person or be represented by any other person whom he may have authorised to represent him, and may produce oral and written evidence and may examine any other person whom the Authority hears pursuant to regulation 31C and any witnesses produced by any such person.

(3) Any person who has served a representation within the time permitted by regulation 31B(2) but who does not wish to be heard, may make a written submission which he shall serve on the Authority not less than 3 working days before the date fixed for the hearing of the case.

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F²(4)] Where an oral hearing is held it shall be held in public unless, having regard to the subject matter of the hearing and any representations from the licence holder the Authority directs that the hearing or any part of the hearing shall take place in private.

F³(b)

(5) The failure of the Authority or of any person to give notice or publish any particulars in the time or manner provided for in the Act or in these Regulations or any other procedural irregularity shall not invalidate the action taken by the Authority; and the Authority may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching its determination to cure the irregularity, whether by the giving of notice or otherwise.

- (a) (6) (a) Subject to sub-paragraph (b) all the proceedings at a hearing of the Authority in connection with a case shall be recorded by a shorthand writer or by some other means, and if any person requests a record of the proceedings the Authority shall cause a mechanical recording or transcript of the shorthand or other record to be made available for purchase by that person at a reasonable price.
- (b) (i) the Authority shall not be required to make available a mechanical recording or transcript of the record of the proceedings at any time after the expiry of one year from the day of publication of its determination of the case.
- (ii) A mechanical recording or transcript of the record of proceedings conducted otherwise than in public shall only be required to be made available for purchase by any person heard by the Authority at those proceedings.

Textual Amendments

- F2** Reg. 31D(4)(a) renumbered as reg. 31D(4) (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 49(b)**
- F3** Reg. 31D(4)(b) omitted (3.11.2008) by virtue of [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 49(a)**

Determination by Authority and Appeal to the Secretary of State

31E.—(1) Where the Authority makes a determination pursuant to this Part of these Regulations the Authority shall serve a notice of its determination and a statement of its reasons for the determination on the licence holder.

- (a) (2) (a) Where the relevant condition of an air traffic services licence provides in respect of a matter or question that the decision of the Authority shall be definitive there shall be no appeal to the Secretary of State.
- (b) Where the relevant condition of an air traffic services licence provides in respect of a matter or question that the licence holder may appeal to the Secretary of State, he may do so in accordance with this regulation.
- (a) (3) (a) An appeal to the Secretary of State shall be made by a notice signed by or on behalf of the licence holder and clearly identifying the matter or question to which it relates and stating the grounds on which the appeal is based and the arguments on which the licence holder relies.
- (b) The licence holder shall serve the notice on the Secretary of State and a copy on the Authority within 14 days of receipt by the licence holder of the notice of determination and statement of reasons pursuant to paragraph (1).
- (4) The Authority shall within one calendar month after receiving notice of appeal publish such particulars of the appeal as it thinks necessary to indicate the substance of the appeal.
- (5) Within 14 days after receiving notice of an appeal, the Authority shall serve on the Secretary of State any submission it may wish to make in connection with the appeal including, if it thinks fit, an amplification and explanation of the reasons for its determination, and shall, within such period, serve a copy of any such submission on the licence holder.

(6) Within 14 days after publication of the notice of the appeal by the Authority any person who appeared at the hearing before the Authority may serve on the Secretary of State a submission giving reasons why the Authority's determination should or should not be upheld and shall within such period serve copies of any such submission on the Authority and the licence holder.

(7) Within 14 days after receipt of any submission made pursuant to the preceding two paragraphs the licence holder may serve on the Secretary of State a reply and shall within such period serve a copy of any such reply on the Authority.

(8) Before deciding an appeal the Secretary of State may ask the licence holder, the Authority or any other person who appeared at the hearing held by the Authority to amplify or explain any point made by them or to answer any other question, the answer to which appears to the Secretary of State necessary to enable him to determine the appeal, and the Secretary of State shall as the case may be give the licence holder, the Authority and any other person who appeared at the hearing held by the Authority an opportunity of replying to such amplification, explanation or answer.

(a) (9) (a) Where any person is obliged to serve on the Authority any notice, representation, submission or other material pursuant to this regulation the Authority shall as soon as may be after receipt thereof make a copy available at its principal office for inspection by any person at any reasonable time.

(b) The Authority shall also make a copy of any representation, submission or other material which it is obliged to serve on the licence holder or the Secretary of State pursuant to this regulation available at its principal office for inspection by any person at any reasonable time.

(10) In the appeal proceedings none of the Authority, the licence holder or any other person may submit to the Secretary of State evidence which was not before the Authority when it decided the case.

Decision by Secretary of State on appeal

31F.—(1) The Secretary of State may if he thinks fit uphold the determination of the Authority in whole or in part or reverse or vary the whole or any part of its determination.

(2) The Secretary of State shall notify the Authority and the licence holder of his decision and of the reasons for it and the Authority shall publish the Secretary of State's notification.

(3) The failure of any person (other than the licence holder in serving notice of appeal on the Secretary of State within the time prescribed in regulation 31E(3)(b)) to serve any notice, representation, submission or reply, or copies thereof or to furnish any particulars in the time or manner provided for in the Act or in these Regulations or any other procedural irregularity shall not invalidate the decision of the Secretary of State; and the Secretary of State may, and shall if he considers that any person may have been prejudiced, take such steps as he thinks fit before deciding the appeal to cure the irregularity.]

Changes to legislation:

There are currently no known outstanding effects for the The Civil Aviation Authority Regulations 1991, PART IIIA.