

2001 No. 493

CIVIL AVIATION

The Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001

Made - - - - 21st February 2001

Laid before Parliament 23rd February 2001

Coming into force 1st April 2001

The Secretary of State for the Environment, Transport and the Regions, in exercise of the powers conferred by sections 83(1)(a) and (c) and (3) and 103(2) of the Transport Act 2000(a), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001 and shall come into force on 1st April 2001.

Interpretation

2. In these Regulations—

“aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982(b).

“airport charges” means charges payable to the owner or manager of an aerodrome for the use of, or for services provided at, an aerodrome but does not include charges payable by virtue of section 73 of the Transport Act 2000;

“authorised person” means—

(a) any constable; and

(b) any person authorised by the CAA (whether by name or by class or description) either generally or in relation to a particular case or class of cases pursuant to paragraph 15 of Schedule 1 to the Civil Aviation Act 1982;

“the court” means as respects England, Wales and Northern Ireland, the High Court and, as respects Scotland, the Court of Session; and

“Eurocontrol” has the meaning given by section 24 of the Civil Aviation Act 1982(c).

(a) 2000 c. 38.

(b) 1982 c. 16; section 88(10) was amended by section 83(5) of, and Part I of Schedule 6 to, the Airports Act 1986 (c. 31) and by section 180 of, paragraph 126(1) and (4) of Schedule 13 to and Schedule 14 to, the Local Government etc. (Scotland) Act 1994 (c. 39).

(c) Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act 1983.

Detention and sale of aircraft for unpaid charges

3. Where default is made in the payment of charges payable in respect of any aircraft by virtue of section 73(1) of the Transport Act 2000, other than charges payable to Eurocontrol, the CAA 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 CAA may, subject to the following regulations, sell the aircraft in order to satisfy the charges.

4. The CAA or 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 in respect of any aircraft by virtue of section 73(1) of the Transport Act 2000 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 3(a) of these Regulations, that the charges in question were incurred in respect of that aircraft; and
- (b) gives to the CAA, pending the determination of the dispute, sufficient security for the payment of the charges which are alleged to be due.

5.—(1) The CAA 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 a person falling within paragraph (2), that default has been made in the payment thereof and that the aircraft which the CAA seeks leave to sell is liable to sale under these Regulations by reason of the default.

(2) A person falls within this paragraph if—

- (a) he is a person to whom the CAA has specified pursuant to section 73(1)(c) of the Transport Act 2000 that charges are to be paid; or
- (b) he is a person of a description of persons to whom the CAA has specified pursuant to that section that charges are to be paid.

6.—(1) The CAA 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.

(2) If such leave is given, the CAA shall secure that the aircraft is sold for the best price that can be reasonably 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 CAA 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.

7. 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 which is due in consequence of the aircraft having been brought into the United Kingdom;
- (b) in payment of the expenses incurred by the CAA in detaining, keeping and selling the aircraft, including its expenses in connection with the application to the court;
- (c) in payment of the charges in respect of any aircraft which the court has found to be due by virtue of section 73(1) of the Transport Act 2000;
- (d) in payment of any airport charges incurred in respect of the 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;

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.

8. 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 3 to 7 of these Regulations include, except where the context otherwise requires, references to any such equipment and stores.

9. 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 CAA to the purchaser.

10. The power conferred by these Regulations to detain an aircraft may be exercised on any occasion when the aircraft is on any aerodrome to which section 88 of the Civil Aviation Act 1982 applies and to Belfast International Airport, Belfast City Airport and Eglinton Airport.

11. Nothing in these Regulations shall prejudice any right of a person falling within regulation 5(2) to recover any charges, or any part thereof, by action.

Signed by authority of the Secretary of State for
the Environment, Transport and the Regions

Bob Ainsworth
Parliamentary Under Secretary of State
Department of the Environment,
Transport and the Regions

21st February 2001

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 CAA, if it 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 CAA shall publish—
 - (i) in the London Gazette and also, if the aircraft is detained in Scotland, 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 so do, 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 CAA to be the owner of the aircraft;
- (c) any person who appears to the CAA to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the CAA to be the operator of the aircraft;
- (e) any person who is registered as a mortgagee of the aircraft under an Order in Council made under section 86 of the Civil Aviation Act 1982^(a) or who appears to the CAA to be a mortgagee of the aircraft under the law of any country other than the United Kingdom;
- (f) any other person who appears to the CAA 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 CAA within 14 days of the service of the notice of his desire to become a party to the proceedings the CAA shall make that person a defendant to the application.

Content and service of the notice under paragraph 1

- 2.—(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 specified by the CAA under section 73(1) of the Transport Act 2000, the CAA, 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; and
 - (d) invite the person to whom the notice is given to inform the CAA within 14 days of the service of the notice if he wishes to become a party to the proceedings on the application.

^(a) Section 86 was amended by section 314(2) of, and paragraph 64(b) of Schedule 13 to, the Merchant Shipping Act 1995 (c. 21).

- (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;
 - (b) by leaving it at his usual or last known place of business or abode;
 - (c) by sending it, addressed to him at his usual or last known place of business or abode, by a registered post service or by a postal service which provided for the delivery of the notice by post to be recorded; 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 its registered or principal office or sending it, addressed to the secretary, clerk or other officer of the company or body at that office, by a registered post service or by a postal service which provides for the delivery of the notice by post to be recorded.
- (3) Any notice which is sent by a postal service 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.
- (4) In this Schedule, the expressions “registered post service” and “postal service” have the meaning those expressions bear in section 125(1) of the Postal Services Act 2000^(a).

^(a) 2000 c. 26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the detention and sale of aircraft where default is made in the payment of charges for air services specified by the Civil Aviation Authority (“the CAA”) by virtue of section 73 of the Transport Act 2000 other than charges payable to Eurocontrol.

The CAA or an authorised person may detain either 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 any other aircraft of which the person in default is the operator at the time when the detention begins. If the charges are not paid within 56 days of the date when the detention begins the CAA may sell the aircraft in order to satisfy the charges (regulation 3).

The CAA or an authorised person shall not detain or continue to detain an aircraft if the operator of the aircraft or any other person claiming an interest therein disputes that the charges are due or that the charges in question were incurred in respect of the aircraft which is detained and gives to the CAA pending the determination of the dispute sufficient security for the payment of the charges which are alleged to be due (regulation 4).

The CAA shall not sell an aircraft without the leave of the court and the court shall not give leave except on proof that a sum is due, that default has been made in the payment thereof and that the aircraft which the CAA seeks leave to sell is liable to sale (regulation 5).

Before applying to the court for leave to sell the aircraft the CAA shall take steps for bringing the proposed application to the notice of interested persons and affording them an opportunity of becoming a party to the proceedings. If leave to sell the aircraft is given the CAA shall secure that the aircraft is sold for the best price that can be reasonably obtained. If any person suffers loss in consequence of a failure by the CAA to comply with the steps required action may be taken against the CAA but once the sale has taken place its validity cannot be impugned (regulation 6 and the Schedule).

The order of application of the proceeds of sale of the aircraft is set out in regulation 7.

The power of detention and sale extends to the equipment of the aircraft, any stores for use in connection with its operation and any aircraft documents carried in it. Any such documents may be transferred by the CAA to the purchaser of the aircraft (regulations 8 and 9).

The power to detain an aircraft may be exercised on any occasion when the aircraft is on any aerodrome to which section 88 of the Civil Aviation Act 1982 applies and to certain airports in Northern Ireland (regulation 10).

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