

2009 No. 1735

CIVIL AVIATION

**The Air Navigation (Single European Sky) (Penalties) Order
2009**

Made - - - - - *8th July 2009*

Laid before Parliament *15th July 2009*

Coming into force - - - *1st September 2009*

At the Court at Buckingham Palace, the 8th day of July 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 2(2) of the European Communities Act 1972^(a) and sections 60 and 61 of the Civil Aviation Act 1982^(b), is pleased, by and with the advice of Her Privy Council, to order as follows.

Citation and commencement

1. This Order may be cited as the Air Navigation (Single European Sky) (Penalties) Order 2009 and comes into force on 1st September 2009.

Interpretation

2.—(1) In this Order—

“authorised person” means the CAA, any constable and 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;

“the common charging scheme regulation” means Commission Regulation (EC) No 1794/2006 laying down a common charging scheme for air navigation services^(c);

“the common requirements regulation” means Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services^(d);

(a) 1972 c.68. Section 2(2) has been amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51).
(b) 1982 c.16. Sections 60 and 61 were amended by the Airports Act 1986 (c. 31), Schedule 6 Part 11, and section 60 was further amended by the Aviation and Maritime Security Act 1990 (c.31) section 47 and Schedule 4.
(c) O.J. No. L 341, 7.12.2006, p.3.
(d) O.J. No. L 335, 21.12.2005, p.13. The common requirements regulation was amended by Commission Regulation (EC) No 1315/2007 on safety oversight in air traffic management and amending regulation (EC) No 2096/2005 – (O.J. No L 291, 9.11.2007, p.16).

“the interoperability regulation” means Regulation (EC) No 552/2004 of the European Parliament and of the Council on the interoperability of the European Air Traffic Management network(a);

“notified” has the same meaning as in article 155 of the Air Navigation Order 2005(b);

“the service provision regulation” means Regulation (EC) No 550/2004 of the European Parliament and of the Council on the provision of air navigation services in the single European sky(c).

(2) Expressions used in this Order that are defined in article 2 of Regulation (EC) No 549/2004 of the European Parliament and of the Council laying down the framework for the creation of the single European sky(d) have the same meaning in this Order as in that Regulation.

(3) Other expressions used in this Order have the same meaning as in the service provision regulation.

Provision of air navigation services

3. A person must not provide any air navigation services without the certification required for the provision of such services by article 7.1 of the service provision regulation.

Provision of air traffic services

4. Where the CAA designates an air traffic service provider to provide air traffic services on an exclusive basis within a specific airspace block under article 8.1 of the service provision regulation—

- (a) it must ensure that the terms of that designation are notified, and
- (b) no other air traffic services provider may provide air traffic services within that airspace block contrary to those notified terms.

Provision of meteorological services

5. A person must not provide any meteorological services in airspace for which a provider of meteorological services has been notified as having been designated on an exclusive basis under article 9.1 of the service provision regulation, unless he is the designated provider.

Relations between service providers

6. Air navigation service providers must not avail themselves of the services of other air navigation service providers that have not been certified in the Community under article 7.1 of the service provision regulation.

Safeguards relating to the use of the European air traffic management network

7. A person must not make use of any system or constituent of the European air traffic management network contrary to—

- (a) a prohibition on its use, or
- (b) a restriction on the area of its application,

established by the CAA under article 7.1 of the interoperability regulation and notified by it.

(a) O.J. No. L 96, 31.3.2004, p.26.

(b) S.I. 2005/1970. There are amendments to article 155 but none are relevant to this Order.

(c) O.J. No. L 96, 31.3.2004, p.10.

(d) O.J. No. L 96, 31.3.2004, p.1.

Compliance monitoring

8.—(1) For the purpose of monitoring compliance with the measures laid down for the development of a charging scheme in the common charging scheme regulation, authorised persons have the right to undertake inspections and surveys using any of the powers described in article 17 of that regulation.

(2) For the purpose of monitoring compliance with the requirements laid down for the provision of air navigation services in the common requirements regulation, authorised persons have the right to undertake inspections and surveys using any of the powers described in article 6 of that regulation.

(3) In order to facilitate inspections and surveys under paragraphs (1) or (2) by an authorised person, an air navigation service provider must within a reasonable time after being requested to do so by an authorised person—

- (a) cause to be produced to that person documents, records, data or other material relevant to the provision of air navigation services or the establishment of air navigation charges, as the case may be;
- (b) make available such facilities and equipment that he possesses that may reasonably be required by that authorised person for the purpose of examining or taking copies of or extracts from documents, records, data or other material relevant to the provision of air navigation services or the establishment of air navigation charges, as the case may be; and
- (c) provide such oral explanations as may be requested on site by that authorised person.

(4) Insofar as an authorised person may require to visit relevant premises, lands or means of transport of an air navigation service provider for the purpose of exercising the right described in paragraph (1), that right and the related obligations of that air navigation service provider under paragraph (3) do not arise until after at least 24 hours notice of that visit is given by the authorised person to that provider.

Offences in relation to documents, records and explanations etc.

9.—(1) A person must not, with intent to deceive—

- (a) use any certificate or any designation issued or required by or under article 7, 8 or 9 of the service provision regulation which has been forged, altered, revoked or suspended, or to which he is not entitled;
- (b) lend any certificate or any designation issued, having effect or required by or under article 7, 8 or 9 of the service provision regulation to, or allow it to be used by, any other person;
- (c) make any false representation for the purpose of procuring for himself or any other person the issue of any such certificate or designation;
- (d) make a declaration for the purpose of article 5.2 or 6.2 of the interoperability regulation that is false in any material particular; or
- (e) on the occasion of an inspection or survey under article 6 of the common requirements regulation or article 17 of the common charging scheme regulation, provide false documents, records, data or other material or false oral explanations.

(2) In paragraph (1) a reference to a certificate or designation includes a copy or purported copy.

Obstruction of persons

10. A person must not intentionally obstruct or impede an authorised person using any of the powers referred to in article 8(1) or (2) when undertaking an inspection or survey under that article.

Penalties

11.—(1) Any person who—

- (a) fails to comply with any obligation imposed upon him under a designation made under article 8 of the service provision regulation;
- (b) fails to formalise, notify or secure the required approval of any working relationship under article 10 of the service provision regulation;
- (c) contravenes article 5.1 or 5.2 of the common requirements regulation;
- (d) fails to take the corrective action imposed upon him by the CAA under article 5.4 of the common requirements regulation

is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

(2) Any person who fails to comply with any obligation imposed upon him by—

- (a) articles 3, 4(b), 6 or 9, or
- (b) article 8(3) (insofar as this article relates to an inspection or survey to monitor compliance with the requirements laid down for the provision of air navigation services in the common requirements regulation),

is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

(3) Any person who fails to comply with any obligation imposed upon him by—

- (a) article 5, or
- (b) a designation made under article 9 of the service provision regulation,

is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(4) Any person who fails to comply with any obligation imposed upon him—

- (a) by articles 7, 8(3) (insofar as this article relates to an inspection or survey to monitor compliance with the measures laid down for the development of a charging scheme in the common charging scheme regulation) or 10,
- (b) to provide an EC declaration of conformity or suitability for use as required by article 5.2 of the interoperability regulation,
- (c) to provide an EC declaration of verification as required by article 6.2 of the interoperability regulation,
- (d) to submit to the CAA the declaration referred to in sub-paragraph (c) together with the technical file as required by the said article 6.2, or
- (e) to provide the CAA, within a reasonable time after being requested so to do, with such additional information as the CAA may require under the said article 6.2,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Any air navigation service provider who contravenes article 5.1, 6.1, 6.2, 7, 8.1 or 11 of the common charging scheme regulation is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Defence

12. In any proceedings for an offence under article 11(1), (2), (3)(a), (4)(a) or (b) of this Order, it is a defence for the person charged to prove that person took all reasonable steps and exercised all due diligence to ensure that the article in question was complied with.

Offences by body corporate

13.—(1) Where a body corporate is guilty of an offence under this Order and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any

neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Order is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence and is liable to be proceeded against and punished accordingly.

Judith Simpson
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in respect of the enforcement of EC measures relating to the single European sky comprising—

- (a) Regulation (EC) No 550/2004 of the European Parliament and of the Council on the provision of air navigation services in the single European sky (O.J. No. L 96, 31.3.2004, p. 10),
- (b) Regulation (EC) No 552/2004 of the European Parliament and of the Council on the interoperability of the European Air Traffic Management network (O.J. No. L 96, 31.3.2004, p. 26),
- (c) Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services (O.J. No. L 335, 21.12.2005, p. 13), and
- (d) Commission Regulation (EC) No 1794/2006 laying down a common charging scheme for air navigation services (O.J. No. L 341, 7.12.2006, p. 3).

In relation to the instrument at (a) the Order precludes a person providing air navigation services when not certificated, precludes the provision of an air traffic service contrary to the terms of any exclusive designation under article 8 of that instrument notified by the CAA, precludes the provision of meteorological services within an exclusive airspace area unless the provider is the designated provider of those services and precludes the use by air navigation service providers of the services of other air navigation service providers that have not been certificated – *articles 3 to 6*.

In relation to the instrument at (b) the Order precludes the use of any system or constituent of the European air traffic management network contrary to any prohibition on its use or any restriction on the area of its operation that has been established by the CAA under article 7 of that instrument and notified by it – *article 7*.

In relation to the instruments at (c) and (d) the Order empowers authorised persons to undertake inspections and surveys to monitor compliance with those instruments and requires the provision of facilities and equipment and the provision of oral explanations necessary to facilitate that compliance monitoring – *article 8*.

It creates offences relating to the use or lending of false certificates or designations, the making of false representations or declarations and the provision of false documents or oral explanations – *article 9*.

It creates an offence for obstruction of inspections and surveys – *article 10*.

Penalty provisions are created and a due diligence defence provided – *articles 11 to 13*.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

The Explanatory Memorandum relating to this instrument is available, alongside this instrument, on the Office of Public Sector Information website at www.opsi.gov.uk. A copy has also been placed in the Library of each House of Parliament.

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STATUTORY INSTRUMENTS

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