

## [<sup>F1</sup>SCHEDULE 1

Regulation 32

### Steps to be taken before applying for leave to sell an aircraft

#### Textual Amendments

- F1** Regulations revoked (31.8.2010) by [The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 \(S.I. 2010/1996\)](#), **regs. 1, 60** (with savings and transitional provisions in reg. 60(2)-(12))

1. The steps in this Schedule apply where the regulator proposes to apply to the court for leave to sell an aircraft under regulation 32.

2.—(1) At least 21 days before applying to the court the regulator must, unless it is impracticable to do so, serve a notice in accordance with paragraph 4 on—

- (a) the person in whose name the aircraft is registered;
- (b) the person, if any, who appears to the regulator to be the owner of the aircraft;
- (c) any person who appears to the regulator to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the regulator 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 <sup>M1</sup> or who appears to the regulator 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 regulator to have a proprietary interest in the aircraft.

(2) Where a person who has been served with a notice in accordance with sub-paragraph (1) informs the regulator within 14 days of the service of the notice of the person's desire to become a party to the proceedings the regulator must make that person a party to the application.

#### Marginal Citations

- M1** 1982 c. 16.

3. At the same time as serving any notice under paragraph 2(1), the regulator must publish a copy of that notice—

- (a) 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
- (b) in one or more local newspapers circulating in the locality in which the aircraft is detained.

4. A notice under paragraph 2(1) must—

- (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 civil penalty under these Regulations, the regulator, on a date which is specified in the notice, detained the aircraft under these Regulations;
- (d) state that, unless payment of the sum so due is made within—
  - (i) a period of 56 days from the date when the detention began, or
  - (ii) if later, 21 days of the date of service of the notice,

the regulator will apply to the court for leave to sell the aircraft;

- (e) invite the person to whom the notice is given to inform the regulator within 14 days of the service of the notice if the person wishes to become a party to the proceedings on the application.

5.—(1) A notice under paragraph 2(1) must be served by the regulator—

- (a) by delivering it to the person to whom it is to be sent;
- (b) by leaving it at that person's usual or last known place of business or abode;
- (c) by sending it, addressed to that person at that person's 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.

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

(3) In this Schedule “registered post service” and “postal service” have the meaning given in section 125(1) of the Postal Services Act 2000 <sup>M2</sup>.

**Marginal Citations**

M2 2000 c.26.

SCHEDULE 2

Regulation 37

Appeals (other than appeals to which Schedule 4 applies)

1.—(1) A UK operator or aircraft operator that wishes to appeal to the appeal body under regulation 36 must give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2) and must at the same time send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (e).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application for a benchmarking plan or emissions plan;
- (c) a copy of any relevant benchmarking plan or emissions plan;
- (d) a copy of any relevant correspondence between the appellant and the regulator;
- (e) a copy of any decision or notice which is the subject matter of the appeal; and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and must send a copy of that notification to the regulator.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 24 days beginning with the date of the decision, deemed decision or the notice takes effect.

(2) The appeal body may in a particular case allow notice of appeal to be given after the expiry of the period in sub-paragraph (1) where it is satisfied that there was good reason for the applicant's failure to bring the appeal in time.

3.—(1) The regulator must, within 16 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.

(2) A notice under sub-paragraph (1) must—

- (a) state that notice of appeal has been given;
- (b) state the name of the appellant;
- (c) describe the decision or notice to which the appeal relates;
- (d) state that if a hearing is to be held wholly or partly in public, an interested party will be notified of the date of the hearing; and
- (e) state that an affected party may request to be heard at a hearing.

(3) An interested party may request the regulator to provide a copy of the documents set out in paragraph 1(2) for the purposes of the appeal only and where such a request is made the regulator must provide the documents as soon as is reasonably practicable.

(4) An interested party—

- (a) may make representations with respect to the appeal to the appeal body in writing within 16 days from the date of the notice;
- (b) must, when making those representations, state whether or not its civil rights will be determined in the appeal, and, if so, which civil rights will be determined.

(5) A copy of any representations made under paragraph (4) will be provided to the appellant and the regulator.

(6) The regulator must, within 8 days of sending a notice under sub-paragraph (1), notify the appeal body of the persons to whom and the date on which the notice was sent.

(7) The appeal body must, as soon as possible after receiving representations under sub-paragraph (4), determine whether an interested party is an affected party.

(8) In the event of an appeal being withdrawn, the regulator must give notice of the withdrawal to all interested parties.

4.—(1) Before determining an appeal, the appeal body may afford the appellant, the regulator and any affected party an opportunity of appearing before and being heard by a person appointed by it (the “person holding the hearing”) and it must do so in any case where a request is made by the appellant, the regulator or any affected party.

(2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly, in private.

(3) Where the appeal body causes a hearing to be held under sub-paragraph (1) it must give the appellant, the regulator and any affected party at least 24 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the appeal body must, at least 24 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice referred to in sub-paragraph (3) in an appropriate international aviation publication; and
  - (b) serve a copy of that notice on every interested party who has made representations in writing to the appeal body.
- (5) The appeal body may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.
- (6) The appeal body may vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to the appeal body to be reasonable.
- (7) The persons entitled to be heard at a hearing are the appellant, the regulator and any affected party.
- (8) Nothing in sub-paragraph (7) prevents the person holding the hearing from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.
- (9) After the conclusion of a hearing, the person holding the hearing must make a report in writing to the appeal body which must include that person's conclusions and recommendations, or decision not to make any recommendation and in all cases the reasons supporting the report.
- (10) Paragraph 4(5) and (6) of Schedule 3 apply to hearings held under this paragraph as if references to the appointed person in those paragraphs were references to the person holding the hearing under this paragraph.

**5.—(1)** Where an appeal under regulation 36 is to be disposed of on the basis of written representations, the regulator must submit any written representations to the appeal body not later than 24 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (e).

(2) The appellant must make any further representations by way of reply to any representations from the regulator not later than 16 days after the date of submission of those representations by the regulator.

(3) Any representations made by the appellant or the regulator must bear the date on which they are submitted to the appeal body.

(4) When the regulator or the appellant submits any representations to the appeal body they must at the same time send a copy of them to the other party.

(5) The appeal body must send to the appellant and the regulator a copy of any representations made to it by any interested party and must allow the appellant and the regulator a period of not fewer than 16 days in which to make representations on them.

(6) The appeal body may in a particular case—

- (a) set later time limits than those mentioned in this paragraph;
- (b) require or permit exchanges of representations between the parties in addition to those mentioned in paragraphs (1) and (2).

**6.—(1)** The appeal body must give notice to the appellant of its determination of the appeal and must provide the appellant with a copy of any report mentioned in paragraph 4(9).

(2) The appeal body must at the same time send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to the regulator; and
- (b) a copy of its determination of the appeal to any interested party who made representations to the appeal body and, if a hearing was held, to any other person who made representations at the hearing.

**7.—(1)** Where a determination of the appeal body on an appeal is quashed in proceedings before any court, the appeal body—

- (a) must send to the persons notified of its determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of its further consideration of the appeal;
- (b) must afford to those persons the opportunity of making, within 31 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as it thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 4(2) to (10) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 applies to the re-determination of the appeal as it applies to the determination of an appeal.

**8.** In this Schedule and Schedule 3—

- (a) “affected party” means an interested party—
  - (i) that has stated in representations under paragraph 3(4) that its civil rights will be determined in an appeal; and
  - (ii) whom the appeal body is satisfied that its civil rights will be so determined;
- (b) “interested party” means a person notified under paragraph 3(1).

## SCHEDULE 3

Regulation 37(3)

### Delegation of Appellate Functions

**1.** In this Schedule—

“appointed person” means a person appointed under regulation 37(2)(a);

**2.** An appointment must be in writing and—

- (a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing to the appointed person, be revoked at any time by the appeal body in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

**3.** Subject to the provisions of this Schedule, an appointed person, in relation to any appeal, matter or question to which the appointed person's appointment relates, has the same powers and duties as the appeal body, other than any function of appointing a person for the purpose—

- (a) of enabling persons to appear before and be heard by the person so appointed; or
- (b) of referring any question or matter to that person.

**4.—(1)** If the appellant, the regulator or any person whose civil rights are to be determined in the appeal expresses a wish to appear before and be heard by the appointed person, the appointed person must give them an opportunity of appearing and being heard.

(2) Whether or not a person under paragraph (1) has asked for an opportunity to appear and be heard, the appointed person—

- (a) may hold a local inquiry or other hearing in connection with the appeal, matter or question; and

(b) must if the appeal body so directs, hold a local inquiry in connection with an appeal, matter or question.

(3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appeal body to sit with the appointed person at the inquiry or hearing and advise the appeal body on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.

(4) Subject to paragraphs (5) and (6), the costs of a local inquiry held under this Schedule must be defrayed by the appeal body.

(5) Subject to sub-paragraph (6), subsections (2) to (5) of section 250 of the Local Government Act 1972 <sup>M3</sup> (local inquiries: evidence and costs) apply to hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but with the following modifications, that is to say—

- (a) with the substitution in subsection (2) (evidence) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the appeal body;
- (c) with the substitution for the reference in that subsection to a local authority of a reference to the regulator;
- (d) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appeal body.

(6) In the case of an appeal to the Scottish Ministers, subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 <sup>M4</sup> (which relates to the costs of and holding of local inquiries) apply to hearings held under this Schedule by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
  - (ii) for the second reference to the Minister of a reference to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
  - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;

- (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
- (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses)—
  - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
  - (ii) for the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

#### Marginal Citations

- M3** 1972 c. 70; section 250 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), **Schedule 1**, Part IV, the Criminal Justice Act 1982 (c. 48), **sections 37, 38** and 46 and the Housing and Planning Act 1986 (c. 63), **Schedule 12**, Part III.
- M4** 1973 c. 65, **section 210** was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), **sections 289F** and 289G (which were inserted into that Act by the Criminal Justice Act 1982 (c. 48), **section 54**) and the Housing and Planning Act 1986, Schedule 11, paragraph 39.

**5.—(1)** Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, the appeal body must, unless it proposes to determine the appeal, matter or question itself, appoint another person under regulation 37(2)(a) to determine the appeal, matter or question instead.

(2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, must be begun afresh.

**6.—(1)** Anything done or omitted to be done by an appointed person in, or in connection with, the exercise of any function to which the appointment relates is for all purposes as done or omitted to be done by the appeal body in its capacity as such.

(2) Sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the appeal body and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates.

## SCHEDULE 4

Regulation 37(4)

### Appeals (Northern Ireland)

**1.—(1)** A UK operator or aircraft operator that wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 36 must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal and the appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice together with the statement of the grounds of appeal.

(2) An appellant may withdraw an appeal by notifying the appeals commission and the appeals commission must as soon as is reasonably practicable notify the regulator.

2. Notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 47 days beginning with the date of the decision, deemed decision or the notice takes effect.

3.—(1) The appeals commission must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991<sup>M5</sup> apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(2) The appeals commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

#### Marginal Citations

**M5** [S.I. 1991/1220 \(N.I.11\)](#); relevant amending instruments are [S.I. 1999/660 \(N.I.4\)](#), 2003/430 (N.I.8).

4. An appeal under this Schedule must be accompanied by a fee of £126.

## SCHEDULE 5

Regulation 40

### Service of notices

1. The provisions of this Schedule apply to the service of a notice except where a contrary provision applies under Schedule 1.

2. A notice must be in writing.

3. A notice may be served on or given to a person by—

- (a) delivering it to that person in person;
- (b) sending it to a postal address or address for service using electronic communication provided in an application—
  - (i) for a benchmarking plan under regulation 9; or
  - (ii) for an emissions plan under regulation 14;
- (c) leaving it at that person's proper address, or
- (d) sending it by post or electronic means to that person's proper address.

4. In the case of a body corporate, a notice may be served on or given to the secretary or clerk of that body.

5. In the case of a partnership, a notice may be served on or given to a partner or a person having control or management of the partnership business.

6. If a person to be served with or given a notice has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept notices of that description, that address must instead be treated as that person's proper address.

7. For the purposes of this Schedule, “proper address” means—

- (a) in the case of a body corporate or its secretary or clerk—
  - (i) the registered or principal office of that body, or
  - (ii) the email address of the secretary or clerk;
- (b) in the case of a partnership or a partner or person having control or management of the partnership business—
  - (i) the principal office of the partnership, or

- (ii) the email address of a partner or a person having that control or management;
  - (c) in any other case, a person's last known address, which includes an email address.
- 8.** For the purposes of paragraph 7, the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.
- 9.** Where an electronic address for submission of a notice is provided under these Regulations, it may be submitted electronically to that address.]

**Changes to legislation:**

There are currently no known outstanding effects for the The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009.