

Serial Number 1947/67



THE INTERNATIONAL AIR SERVICES LICENSING EMERGENCY REGULATIONS 1947

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington, this 30th day of
April, 1947

Present :

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL

PURSUANT to the Emergency Regulations Act, 1939, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

1. These regulations may be cited as the International Air Services Licensing Emergency Regulations 1947.
2. In these regulations, unless the context otherwise requires,—
 - “Aircraft” includes all aircraft using gas lighter than air as a means of support, and all aeroplanes, seaplanes, flying-boats, gliders, or other aircraft heavier than air :
 - “Air Secretary” means the Air Secretary under the Air Department Act, 1937 :
 - “Air Service” means a series of journeys which are undertaken by aircraft for the carriage of passengers or goods between the same two countries and which taken together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of it, whether or not the series of journeys takes place in accordance with a time-table :
 - “Fares” includes any charge of any nature for the carriage of passengers :
 - “Goods” means all kinds of movable property, including animals and mails :
 - “International air service” means an air service in respect of journeys beginning in New Zealand and ending outside New Zealand, or beginning outside New Zealand and ending in New Zealand, or beginning and ending outside New Zealand with an intermediate stop in New Zealand, or beginning and ending in New Zealand with an intermediate stop outside New Zealand ; and includes any air service in respect of any other journeys beginning and ending in New Zealand to which the Transport Licensing (Commercial Aircraft Services) Act, 1934, does not apply :

“Licence” means an international air service licence issued under these regulations :

“Licensee” means the holder for the time being of a licence issued under these regulations :

“Minister” means the Minister in charge of the Air Department :

“New Zealand” includes the Cook Islands, Western Samoa, Tokelau Islands, and any other territory subject to the protection, mandate, trusteeship, or authority of the Government of the Dominion of New Zealand.

3. These regulations shall extend to and be in force in the Cook Islands and Western Samoa.

4. (1) It shall not be lawful, after the enactment of these regulations, for any person to carry on in New Zealand any international air service otherwise than pursuant to and in conformity with the terms of the operating permission contained in an international air service licence granted under these regulations :

Provided that any international air service which is being carried on immediately before the date of the enactment of these regulations may continue to be carried on for a period of three months after that date, and if within that period an application for such a licence in respect of that service is duly made under these regulations, the service may continue to be carried on until the application is disposed of.

(2) Every person who carries on an international air service contrary to the provisions of this regulation commits an offence and shall be liable to a fine not exceeding £25 for every day on which the offence is committed.

(3) If any person carrying on an international air service contrary to the provisions of this regulation is a corporation, every director and every other person who acts in the management of the service commits an offence and shall be liable to a fine not exceeding £10 for every day on which the service is so carried on.

(4) In any case where an international air service may lawfully be carried on only pursuant to a licence under these regulations, every person commits an offence, and is liable to a fine not exceeding £50 for each such offence, who does any act in any capacity in relation to the service as agent for the person carrying on the service if at the time of his doing such act a licence under these regulations is not in force in respect of the service.

5. (1) The Minister shall be the sole licensing authority to grant international air service licences and to exercise jurisdiction in respect thereof.

(2) For the purpose of better enabling the Minister to discharge his functions, the Minister may from time to time appoint any person or persons to inquire into and report to him upon any matters in relation to any licence or application for a licence.

(3) For the purposes of this regulation the provisions of the Commissions of Inquiry Act, 1908, shall, as far as they are applicable and with the necessary modifications, apply as if the Minister and any person or persons appointed by him under the last preceding subclause were a Commission of inquiry appointed under that Act.

6. (1) Every application for a licence under these regulations shall be in a form prescribed by the Air Secretary for the purpose, and shall be lodged with him accompanied by a fee of £2.

(2) Every applicant for a licence shall, in support of the application, supply such information and documents as may be required by the Air Secretary.

7. On receiving an application for a licence the Minister shall give public notice in such manner as he thinks fit of the receipt of the application, specifying in the notice a time, being not less than twenty-one clear days from the date of the notice, within which he will receive written representations relating to the application. The Minister shall not finally consider the application until after the expiry of the time so specified.

8. (1) In considering any application for an international air service licence under these regulations the Minister shall have regard generally to any international conventions, agreements, and arrangements to which the Government of New Zealand is a party and any conventions, agreements, and arrangements between the Government of New Zealand and the Government of any other country or any person whose principal place of business is in any other country, and if the granting of the licence for the proposed air service would be contrary to any such convention, agreement, or arrangement the Minister shall refuse to grant the licence.

(2) If after giving consideration to the matters mentioned in subclause (1) of this regulation the Minister proposes to give further consideration to the application, he shall take into account—

- (a) The extent to which the proposed service is necessary or desirable in the public interest :
- (b) The financial ability of the applicant to carry on the proposed service, and the likelihood of his carrying it on satisfactorily :
- (c) Time-tables or frequency of the proposed service :
- (d) The proposed fares and charges for the carriage of passengers and goods :
- (e) The air services already provided in respect of the countries to be served and in respect of the proposed routes, and the air transport requirements of such countries and on such routes, including the requirements in respect of the carriage of mails by air :
- (f) The capacity of the aircraft proposed to be used in connection with the service :
- (g) Any written representations received by the Minister in relation to the application :
- (h) Such other matters as the Minister thinks fit.

9. (1) The Minister, after giving further consideration to the application, may refuse it, or may grant it wholly or partly, and subject to such conditions as he thinks fit. The licence may be in such form as the Minister thinks fit.

(2) Without prejudice to the generality of subclause (1) of this regulation, the Minister, in granting any licence, may prescribe—

- (a) The class and number of aircraft to be used in connection with the service, and the maximum or minimum capacity thereof :
- (b) Any class of goods which may or may not be carried :
- (c) A date not later than which the service shall be commenced :
- (d) The countries to be served and the route to be followed :
- (e) The frequency of service to be observed :
- (f) The fares to be charged for the carriage of passengers and the charges to be made for the carriage of goods.

10. The Minister may, before granting any licence, or the renewal of any licence, under these regulations, call upon the applicant for the licence or renewal (whether or not at the time of making the application he was actually carrying on the service to which it relates) to furnish

to the satisfaction of the Minister proof that his liability in respect of the death of or bodily injury to passengers and in respect of loss of or damage to any goods that might be conveyed by the service is covered by insurance or otherwise to such extent as the Minister deems reasonable, having regard to the nature and extent of the service.

11. (1) It shall be a condition of every licence (whether inserted therein or not) that the licensee will not abandon or curtail the authorized service without the consent of the Minister.

(2) If any licensee abandons or curtails any service in breach of the last preceding subclause the Minister may, in his discretion, revoke his licence.

12. (1) The Air Secretary shall keep a register of the licences issued under these regulations, and shall note therein from time to time every renewal, transfer, revocation, suspension, or variation of any licence.

(2) The contents of the register may be evidenced in any proceedings by a certificate under the hand of the Air Secretary, and every such certificate shall be *prima facie* evidence of the matters stated therein.

(3) A certificate under the hand of the Air Secretary that on a date specified in the certificate the name of any person did not appear in the register as the holder of a licence under these regulations shall, until the contrary is proved, be sufficient evidence that that person was not the holder of a licence on that date.

13. Every licence shall take effect or be deemed to have taken effect on such day, whether on or before or after the date thereof, as may be stated therein, and shall, unless sooner revoked, or unless expressed to expire at an earlier date, expire on the completion of two years after the date on which it took effect :

Provided that where application for the renewal of a licence is duly made as hereinafter provided the licence shall, where the application is not disposed of before the date of the expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

14. (1) The Minister during the currency of a licence may, of his own motion or on the application of the licensee, amend or revoke any of the terms or conditions of the licence or add any new terms or conditions which in his opinion are necessary in the public interest.

(2) The Minister shall give to the licensee, and to every other person who in his opinion is likely to be affected, not less than twenty-one clear days' notice of his intention to exercise any power conferred on him by this regulation.

(3) Every such amendment or revocation, or addition of new terms or conditions, made pursuant to this regulation shall be noted in the register of licences.

15. (1) Every application for a renewal of a licence shall be made in a form prescribed by the Air Secretary for the purpose, and shall be lodged with him, accompanied by a fee of £2, not less than one month before the day on which the licence expires.

(2) Subclause (2) of Regulation 6 and Regulation 7 hereof shall apply to every application for the renewal of a licence as if it were an application for a new licence.

(3) No person shall be entitled as of right to a renewal of a licence, and in considering any application for a renewal the Minister shall have regard to and take into account all that he is directed by Regulation 8 hereof to have regard to and take into account in considering an original application for a licence.

(4) The renewal of a licence shall take effect, unless expressed to expire at an earlier date, for a period of two years from the expiry of the licence in renewal of which it is granted, but any such renewal may be granted in advance to take effect as aforesaid.

16. (1) The Minister may at any time appoint any person or persons to hold a public inquiry as to whether or not any international air service carried on under the authority of a licence under these regulations is being carried on in conformity with the terms and conditions of the licence.

(2) Notice in writing of the intention to hold the inquiry shall be given to the licensee and to all other persons who in the opinion of the person or persons appointed to hold the inquiry are interested. The notice shall contain particulars of the day, time, and place fixed for the inquiry and of the matters proposed to be inquired into. The notice to the licensee shall be given not later than twenty-one clear days before the day fixed for the inquiry.

(3) For the purposes of the inquiry the provisions of the Commissions of Inquiry Act, 1908, shall, so far as they are applicable and with the necessary modifications, apply as if the person or persons appointed to hold the inquiry were a Commission of inquiry appointed under that Act.

(4) If after considering the report of the person or persons holding the inquiry the Minister is satisfied that the licensee is not carrying on the service in conformity with the licence, or that he has disposed of the service to any other person, the Minister may, in his discretion, revoke the licence.

(5) Instead of revoking any licence as aforesaid, the Minister may suspend the licence for such period as he thinks fit, and he may in any case, without any inquiry being held as aforesaid, so suspend any licence if he is satisfied that the licensee has wilfully committed a breach of any of the conditions of the licence.

17. Notwithstanding anything to the contrary in Regulation 16 hereof, a licence may be revoked by the Minister, without any inquiry being held as aforesaid,—

- (a) If the service authorized by it is not commenced on the date specified in that behalf in the licence; or
- (b) If the licence has been granted under or in accordance with any convention, agreement, or arrangement between the Government of New Zealand and the Government of any other country (whether or not any other Government is also a party thereof) and that convention, agreement, or arrangement has been terminated or has ceased to bind the Government of New Zealand or the Government of that other country; or
- (c) If the licence has been granted under or in accordance with any convention, agreement, or arrangement between the Government of New Zealand and any person whose principal place of business is in any other country and that convention, agreement, or arrangement has been terminated or ceased to bind the Government of New Zealand; or
- (d) If the licence has been granted under or in accordance with any such convention, agreement, or arrangement as is referred to in paragraph (b) or paragraph (c) hereof and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of New Zealand, has become entitled, under or in accordance with the convention, agreement, or arrangement to revoke the licence.

18. (1) Any licence under these regulations may, subject to the provisions of this regulation, be transferred to any person.

(2) Application for the transfer of any licence shall be made in a form prescribed by the Air Secretary for the purpose, and shall be lodged with him accompanied by a fee of £2. Subclause (2) of Regulation 6 hereof shall apply to every such application.

(3) The Minister shall give to every person who, in his opinion, is likely to be affected not less than twenty-one clear days' notice of his intention to consider any application for a transfer of a licence.

(4) The Minister, after considering the application and any objections thereto, may grant or refuse the transfer of the licence, but shall not in any case grant the transfer unless he is satisfied that the proposed transferee is financially able to carry on the service and is likely to carry it on satisfactorily.

19. (1) Proceedings before the Minister under these regulations shall not be held bad for want of form.

(2) No appeal shall lie from any decision made by the Minister, and, except upon the ground of lack of jurisdiction, no proceeding or decision as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

20. Every person carrying on an air service pursuant to a licence under these regulations shall furnish to the Air Secretary such financial and statistical returns and statements as the Air Secretary may from time to time require by notice in writing addressed to that person.

21. (1) All proceedings in respect of offences under these regulations shall be taken in a summary way on the information of the Air Secretary or a person appointed by the Air Secretary for that purpose, or any constable, and shall be heard before a Magistrate alone.

(2) No person appointed by the Air Secretary under the last preceding subclause shall be called upon to prove that he has been so appointed.

22. In any proceedings for an offence under these regulations—

(a) The allegation in the information that an air service is being carried on shall be sufficient evidence of that fact until the contrary is proved :

(b) Any licence may be proved by the production of a copy of that licence certified to be correct by the Air Secretary :

(c) Judicial notice shall be taken of the signature of the Minister and of the Air Secretary.

23. (1) The provisions of these regulations are in addition to, and not in derogation of, the provisions of any Act relating to the licensing and control of aircraft.

(2) In particular, no aircraft by virtue of its being used in connection with any air service licensed under these regulations shall be exempt from the operation of any regulations under the Air Navigation Act, 1931.

W. O. HARVEY,
Clerk of the Executive Council.