

# **TRANSPORT LICENSING AUTHORITY**

## **Applications for a Guernsey Air Transport Licence**

### **Procedure - Notes for Guidance**

#### **1. The objectives**

- 1.1 The Transport Licensing Authority aims to make the procedure for applying for an air transport licence understandable, transparent, fair and just. This includes (but is not necessarily limited to), so far as is practicable:
- (a) using clear, unambiguous and understandable language in all of its publications and communications with interested parties;
  - (b) where appropriate, conducting its business in public;
  - (c) dealing with the application in ways that are proportionate to:
    - (i) the importance of the application;
    - (ii) the complexity of the issues involved; and
    - (iii) saving expense and avoiding unnecessary delay;
  - (d) ensuring that the application is dealt with expeditiously and fairly; and
  - (e) allotting to it an appropriate share of the Authority's time and resources.
- 1.2 Where, in the Authority's opinion, circumstances require a departure from the procedure set out in this document, it will continue to abide by the principles of natural justice, seek to achieve fairness and be guided by the objectives set out above.
- 1.3 Throughout the application process, the Authority will require all interested parties to help them further these objectives.

#### **2. The Authority**

- 2.1 The Transport Licensing Authority is a committee of the States constituted on 1<sup>st</sup> May 2016. The members are:

Deputy B.Paint, President  
Deputy D.Tindall, Vice-President  
Deputy J.Gollop  
Deputy E.Yerby  
Deputy C.Meerveld

It is the function of the Authority to determine applications for air route licences and to carry out any other transport licensing and regulatory functions which the States may confer on it from time to time.

### **3. Applications**

- 3.1 An application must be submitted on the standard application form and must be accompanied by a writing statement setting out the following information -
- a) the grounds for the application, and
  - b) the evidence on which the applicant intends to rely.
- 3.2 An applicant may also submit other written information in support of an application.
- 3.3 Please see paragraph 4.3 regarding confidential information.

### **4. Publication of the application**

- 4.1 Notice of the application will be published in the Gazette Officielle and Official Record of the Civil Aviation Authority. Publication will normally be on the first Tuesday following receipt of an application, taking account of deadlines for the submission of notices in these two publications, unless the Authority requests further information from the applicant.
- 4.2 Pursuant to its objective of transparency, and subject to paragraph 4.3, the application and all supporting information will be published on the States of Guernsey website.
- 4.3 The applicant may request the Authority to treat any part of the application or supporting information as confidential. Such a request should be made to the Authority at the time of application, setting out the reasons for that request.
- 4.4 If the Authority rejects the request, the applicant will have the opportunity to withdraw the application or any supporting information.

### **5. Representations following publication of the application**

- 5.1 Following publication of the application pursuant to s.15 of *The Air Transport Licensing (Guernsey) Law, 1995* (“the Law”), a period of 14 days will be allowed for interested parties to make representations to the Authority. This period may be extended at the discretion of the Authority to take account of exceptional circumstances (for example, extended periods of public holidays or illness).
- 5.2 Any person wishing to make representations (“representors”) in support of or objecting to the application will be able to obtain a copy of the application and **all** additional and/or supporting information provided by the applicant from the States of Guernsey website, alternatively will be available for inspection or, if resources permit, will be provided with copies of these documents on request.
- 5.3 Representors must:
- (a) make their representations to the Authority in writing; and
  - (b) must state clearly the grounds for the representation and any information and/or evidence upon which they propose to rely.
- 5.4 All representations will be passed by the Authority, **in full**, to the applicant.

- 5.5 In the event that the Authority decides to convene a hearing, and subject to the matters set out below, all representors and the applicant will have the opportunity to make an oral presentation at the hearing. A representor is not obliged to make an oral presentation and, whether they do or not, their written submission will be taken into account by the Authority.

## **6. Applicant's representations in response**

- 6.1 The applicant will be allowed a further 14 days in which to submit representations in writing to the Authority in response to the representations of interested parties.

## **7. Determination of the application**

- 7.1 If no representations in response to the application are received, the Authority will determine the application according to the Law and taking account of all of the information provided by the applicant and the matters specified in s.7 of the Law, including the applicable Policy Statement (currently that approved by the States of Deliberation in 2013).
- 7.2 If representations have been received in response to the application, the Authority may (in its absolute discretion) convene a hearing (see below). If the Authority decides not to convene a hearing, it will determine the application taking account of all the matters described above and, in addition, the written representations made in response to the application and any made in response thereto by the applicant.

## **8. Hearings**

- 8.1 At its absolute discretion, and only if it considers it necessary to further the objectives set out in section 1 above, the Authority may convene a hearing to receive oral presentations from the applicant and representors. The Authority may, if it thinks it necessary to further the objectives set out in section 1, limit or exclude oral presentations and may make directions accordingly.
- 8.2 If the Authority decides to hold a hearing, it will notify the applicant and representors of this decision in writing. The Authority will also:
- (a) ask the applicant and representors to indicate whether or not they wish to make an oral presentation at the hearing;
  - (b) if any representor does wish to make an oral presentation, they must provide an address to which the applicant may send documents and bundles; and
  - (c) request dates when those who wish to make an oral presentation (together with that of any representatives and witnesses they propose to call) can attend a hearing within a period that is not sooner than 8 weeks and not later than 10 weeks after the date of its notification.
- 8.3 The applicant and each representor will be requested to respond to the questions in paragraph 8.2 within 7 days of the notification.

- 8.4 The Authority will endeavour to set a hearing date that accommodates the availability of the applicant, any representor who wishes to make an oral presentation, their representatives and any witnesses. To ensure that the application is dealt with expeditiously, if a date cannot be identified that accommodates the availability of all persons who wish to attend the hearing, the Authority will select a date for the hearing that it considers most fairly accommodates the availability of those who wish to attend.
- 8.5 There is a presumption that the hearing will be held in public, but the Authority retains a discretion to conduct the hearing (or part of it) in private. The hearing, whether in public or private, will be recorded by the Authority. The public will not be entitled to speak at a hearing (unless such a person has made a representation, complied with any relevant directions (see below) and wishes to address the Authority).
- 8.6 The Authority will determine the application in private following a hearing, but not necessarily on the date of the hearing.

## **9. Directions for the efficient conduct of the hearing**

- 9.1 If the Authority decides that a hearing is necessary then, in order to promote the efficient conduct of the hearing, the standard Directions set out in the Schedule shall apply to the applicant and any representor who wishes to make an oral presentation at, or otherwise take part in, the hearing.

## **10. Outcome of the Application**

- 10.1 Where the Authority proposes to refuse an application or to impose any term or condition in respect of a licence, notice of such proposal will be given to the applicant in accordance with s.10 of the Law and the applicant will have 14 days from the date of the notice within which to make written representations regarding the proposal.
- 10.2 If no representations are received from the applicant, the Authority will make a final determination of the application. This determination will not take place until after the 14 day period for representations has expired, unless, prior to the end of that period, the applicant provides a written statement that it does not intend to make a representation.
- 10.3 If representations are received, they will be considered by the Authority as part of its final determination of the application. The determination will be made as soon as practicable after the representation is received.

## **11. Notices of the grant or refusal of the licence**

- 11.1 Notice of the grant of a licence or the refusal of the application will be published in the *La Gazette Officielle* and Official Record of the Civil Aviation Authority pursuant to s.15 of the Law. Publication will be on the first Tuesday following a decision of the Authority, taking account of deadlines for the submission of notices in these two publications.

## **12. Publication of Licence**

- 12.1 The licence that is granted and any conditions attached to that licence will be published on the States of Guernsey website.

### **13. Appeals**

13.1 Appeals are dealt with under section 14 of the Law.

### **14. Amendment of the Guidance**

14.1 These notes are for guidance and may be subject to change from time to time.

## **SCHEDULE**

### **Standard Directions**

In order to promote the efficient conduct of a hearing and in furtherance of the objectives set out in section 1, the Authority has decided to issue the following directions to the applicant and any representor who wishes to make an oral presentation at the hearing:

- (1) A hearing and all evidence, argument and submissions shall, unless the Authority directs otherwise, be in public. The hearing will be recorded.
- (2) The strict rules of evidence shall not apply to the hearing. It is for the parties to decide how best to prove any facts upon which they seek to rely during the course of the hearing. The burden of proof shall be on the applicant and the standard of proof shall be the civil standard (*i.e.* on the balance of probabilities). It shall be a matter for the Authority to decide what weight is attached to any particular piece of evidence. All parties are reminded of the provisions of *The Air Transport Licensing (Guernsey) Law, 1995* and the applicable Policy Statement (currently that approved by the States of Deliberation in 2013).
- (3) Not less than 21 days before the hearing, the applicant shall serve upon each representor who has indicated a wish to make an oral presentation and the Authority all the documents and evidence upon which it proposes to rely at the hearing.
- (4) Unless they simply wish the Authority to take into account the written representations already made to the Authority pursuant to paragraph 3.3 above, each representor who has indicated a wish to make an oral presentation shall, not less than 14 days before the hearing, serve upon the applicant and the Authority all the documents and evidence (other than their written representations already made to the Authority pursuant to paragraph 3.3 above) upon which they propose to rely at the hearing.
- (5) The responsibility for preparing, copying and distributing the agreed bundle(s) for use at the hearing shall be the applicant's.
- (6) The applicant and any representor wishing to make an oral presentation are required to co-operate to prepare a joint, indexed, paginated and legible hearing bundle. The bundle shall include:
  - (a) the application and all other documents submitted to the Authority in support thereof;
  - (b) all representations received by the applicant from the Authority pursuant to paragraph 5.4 above;

- (c) all responses by the applicant to those representations pursuant to paragraph 6.1 above;
  - (d) the documents and evidence referred to in paragraphs (3) and (4) of these Directions;
  - (e) the skeleton arguments referred to in paragraph (9) of these Directions; and
  - (f) copies of any legal authorities referred to or relied upon.
- (7) In the unlikely event that it is not possible for the parties to agree what is to be included in a joint bundle, separate indexed and paginated bundles may be prepared by the applicant and each representor who wishes to make an oral presentation. The Authority will require written explanations as to why it was not possible to prepare a joint bundle.
- (8) In the event that the joint or other bundles exceed 1 lever arch file, each volume shall be clearly marked “A”, “B”, “C” *etc.* and there shall be a paginated “core” bundle not exceeding 100 pages containing only the essential documents necessary to understand the substance of the case.
- (9) The applicant and any representor who wishes to make an oral presentation shall, not less than 7 days before the hearing, exchange with each other party and file with the Authority their skeleton argument setting out **in summary** the grounds for their application or representation and arguments in support of the same (with clearly identified cross-references to documents in the bundle or bundles) to be included in the hearing bundle(s). Nobody is obliged to file a skeleton argument, but in the absence thereof that party **shall not be entitled to make any oral presentation at the hearing.**
- (10) Not less than 3 working days before the hearing, the applicant shall deliver 7 copies of the bundle(s) referred to in paragraph (6) to the Authority and one copy to each representor who has expressed a wish to make an oral presentation.
- (11) It is the responsibility of each party to bring to the hearing sufficient copies of the bundle or bundles for their own use.
- (12) The applicant or any representor who wishes to make an oral presentation may make representations in writing to the Authority (and copied to the other parties) in respect of these directions or any other matters concerning the conduct of the hearing. Any such representations shall be made promptly.

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