

STATES OF JERSEY



AIR TRANSPORT PERMITS: REVISED POLICY STATEMENT

**Presented to the States on 4th November 2003
by the Economic Development Committee**

STATES GREFFE

REPORT

1. The air transport services between the Island and the United Kingdom, the remainder of the Channel Islands and the Isle of Man, carrying passengers or cargo for reward, are currently subject to a permit issued by the Economic Development Committee in accordance with the Air Transport Permits (Jersey) Law 1998, as amended by the Air Transport Permits (Amendment) (Jersey) Law 2002. In addition, at the time of grant of a permit, in the case of a flight where the aircraft is used by a Community air carrier, that carrier needs to be holding an operating licence granted in accordance with E.U. Council Regulation 2407/92 on licensing of air carriers; and in any other case, the flight needs to be authorised by an Air Transport Licence issued by the U.K. Civil Aviation Authority or with the permission of the United Kingdom Secretary of State for Transport.
2. A requirement to obtain a permit from the Economic Development Committee does not apply for any flight operating between the Island and any point in the United Kingdom, the remainder of the Channel Islands and the Isle of Man for which there is no requirement for the carrier to hold an operating licence from the United Kingdom Civil Aviation Authority, or when the flights listed in the Schedule to the Air Transport Permits (Amendment) (Jersey) Law 2002 apply (e.g. ambulance flights, technical stops etc.).
3. Article 12(1) of the Air Transport Permits (Jersey) Law 1998 requires that a policy statement be issued. This is intended to assist applicants in understanding the policy that the Economic Development Committee intends to adopt in performing its functions under the Law. The statement also sets out how, in general, an application for a permit can be expected to be dealt with and responded to by the Economic Development Committee.

4. The Committee, having regard for –

- the changing environment confronting the Island in respect of its air transport services;
- the overall policy of the States of Jersey towards encouraging competition in order to counter inflation; and
- the establishment of a Competition Regulatory Authority and the proposed enactment of a Competition Law;

has decided to pursue an “open skies” policy so that, apart from the need of an airline to meet European Union and/or United Kingdom Civil Aviation Authority requirements of aircraft safety and financial soundness, there will be no restrictions placed upon an airline wishing to start up a service to and from the Island other than the capacity of the airports to be served. This revised policy statement gives effect to this “open skies” policy.

5. The previous policy statement was based on the following principles –

- whereas there was sympathy for the argument that the most favourable cost of air travel together with the provision of a quality service may be best obtained through competition, it was believed that a degree of regulation was needed in order to safeguard user requirements and particularly those of Island residents;
- whereas the view was held that the granting of permits for scheduled and charter air services should be liberal, it was believed that permits should be withheld where –
 - ◆ the provision of the air transport service proposed would be contrary to the best interests of persons using or likely to use air transport services between the Island and other places in the British Isles;
 - ◆ the operating of charter flights or summer-only scheduled services would have an adverse

impact on the year-round scheduled services;

- ◆ the particular circumstances of the Channel Islands justified the retention of a licensing power to protect the interests of the users of the Island's air transport services.

6. The Economic Development Committee now considers that the interests of Island businesses, residents and visitors alike are to be best served by further encouraging competition, and avoiding the imposition of unnecessary administrative costs either on the airlines or on the authorities. This is in line with the States economic policy generally. It will also bring the Island into line with the "open skies" policy of the European Union.
7. The possible threat posed to the year-round scheduled services by summer-only charter flights, to which the previous policy statement refers, has virtually disappeared with the contraction of the tourism industry. Both tourists and Island residents are now capable of being catered for by the year-round scheduled services, and it is important therefore to remove any obstacle to the provision of such services.
8. One of the *raison d'être* for the introduction of the Air Transport Permits Law was the wish of the Island authorities to protect a high frequency inter-Island service. The Committee considers that recent changes in the nature of the service provided inter-Island has altered the position. The Committee now believes that the interests of users can be best secured by facilitating competition on the inter-Island routes.
9. The Air Transport Permits Law has also been used to date to give an element of protection to air freight cargo services. There has been a concern to maintain an air cargo service as an alternative to surface transport. The Economic Development Committee is not convinced however that the benefit derived from this policy is such as to justify excluding such services from the "open skies" policy.
10. For so long as the Air Permits Law remains in force, applications for a permit will continue to be required. However, with the "open skies" policy now to be followed by the Committee to which the foregoing refers, the presumption should be that all permit applications will be granted. The Committee's present intention is to bring a proposal to the States to repeal the Law but before doing so it will wish to monitor the effects of the 'open skies' policy to ensure that, if called for, appropriate action can be taken to safeguard user interests.
11. Under the previous policy, airlines were expected to enter into a service level agreement upon being granted a permit so that users were not disadvantaged by the absence of competition. With the adoption of an "open skies" policy the Committee will no longer impose this requirement on airlines.
12. Processing of permit applications.

For the time being the procedure for considering applications for a permit from the Economic Development Committee will remain unchanged and in accordance with the Air Transport Permits Law, as follows –

- (a) An application for a permit shall be in the form required by the Committee. Applicants will be encouraged to discuss their proposals with the Committee, or with the officers of the Department, prior to submitting a formal application.
- (b) Prior to a permit being issued the applicant will be required to have obtained either a Route Licence or an Air Transport Licence from the Civil Aviation Authority or the permission of the Secretary of State for Transport. Such a licence or permission however will not need to have been obtained prior to application being made to the Economic Development Committee for a permit. Under these arrangements the Economic Development Committee will accept the outcome of the Civil Aviation Authority's licensing procedures for determining the financial fitness and technical capabilities of individual airlines, and for determining when an airline is engaged in anti-competitive behaviour.

- (c) The Committee may refuse to consider an application for the granting of a permit unless it has been served on the Committee not less than 6 months before the beginning of the period from which the permit is proposed to be in effect. The Committee has discretion, however, to accept applications at less than 6 months' notice and will normally do so subject to an absolute minimum of 10 working days' notice. The Committee may dispense with or vary these requirements where it is satisfied that for reasons of urgency it is desirable to do so and it is of the opinion that to do so is unlikely to prejudice the interests of the Island or any interested party.
- (d) Applicants will be required to support their applications for a permit with the following information –
- the route(s) to be served;
 - period and frequency of service;
 - aircraft type to be used (among other things, this information will enable a view to be taken of the likely noise level and its acceptability);
 - the number and nature of aircraft in the airline's fleet, with particular concern for the nature of the back-up arrangements;
 - information relating to the need/demand for the proposed service and the benefits to be derived by users and by the Island;
 - in the case of an application for a charter service, the name and address of the charterer of the aircraft, and the name, address and ATOL number (where appropriate) of the travel agent, organiser or other person, if any, who is to make available accommodation on the proposed service.

The Committee may, however, by notice, at any time after receipt of an application, require the applicant to provide it with such additional information and documentation in the applicant's possession or control as the Committee considers relevant to the application.

- (e) Details of all applications will be published in the Jersey Gazette in the Jersey Evening Post. Any interested party will have the opportunity to submit views on an application, but views in support of or in objection to the granting of a permit must be in writing and will need to be received by the Committee within 14 days of the date of the publication of the details of the application. The Committee may dispense with or vary these requirements for expedited applications.
- (f) Where the flights to which an application relates are between the Island and a place in Guernsey or Alderney, or where the Authorities are aware that the applicant intends the flights to which the application relates to be part of an air transport service that includes flights to or from Guernsey or Alderney, the Economic Development Committee shall, before considering the application, consult with the Guernsey Transport Board or the Alderney Transport Committee, as the case may be.
- (g) When the Committee is satisfied that the granting of an application would be in the best interests of persons using or likely to use air transport services between the Island and other places in the British Islands and also of the Island, and is in accord with its published policy statement, a permit would be issued. Details of all permits issued will be published in the Jersey Evening Post.
- (h) Before refusing to grant a permit, or to grant or vary a permit on terms different from those proposed in the application, the Committee shall inform the applicant and any persons from whom it received representations on its proposals, and invite the applicant and such persons to make representations or, if the Committee so wishes, oral representations, about the proposals to

the Committee no later than such date or on such day as is specified in the notice.

- (i) When the Committee refuses a permit or decides to grant a permit on terms different from those proposed in the application, it will, as soon as possible after it has made a decision, notify the applicant of that decision and provide the applicant with a written statement of the reasons for so doing. Details of all permits refused will be published in the Jersey Evening Post.
- (j) When an application is refused or issued subject to conditions the applicant will be able to appeal against the decision of the Committee to the Royal Court within 14 days of the date of the notification of the decision, on the grounds that the decision of the Committee was unreasonable having regard to all the circumstances of the case. If the Court rules that the decision of the Committee is unreasonable it may direct the Committee to reconsider its decision.
- (k) The Committee may revoke, vary or suspend a permit where –
 - the service has not been commenced within 6 months of the date of the granting of the permit;
 - the permit holder has not carried on the service to which the permit refers for a period of 3 consecutive months;
 - the permit holder has ceased to conduct the business of providing air transport services;
 - the permit holder in obtaining the permit has provided the Committee with information which was untrue or misleading in any material particular;
 - the permit holder has failed to comply with a condition attached to the permit issued;
 - the permit holder has requested that the permit be revoked, varied or suspended.

The Committee will notify the holder of a permit in writing of the intention to revoke, vary or suspend a permit and the reasons for doing so. Representations shall be made within the period of 14 days beginning on the date on which notice is given to the permit holder, or such longer period as the Committee may allow. Details of all permits revoked, varied or suspended will be published in the Jersey Evening Post.

- (l) The Committee shall revoke or suspend a permit where the permit holder's Civil Aviation Authority Route or Air Transport Licence, or the permission of the Secretary of State, has been revoked or suspended.

13. Any queries concerning this statement, or any matter relating to the Air Transport Permits (Jersey) Law 1998, as amended, should be directed to –

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