

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)

Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011

INTRODUCTION

A At the meeting of the Executive Council on 18 October 2011, the Council ADVISED and the Chief Executive ORDERED that the Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011 at **Annex A** should be made to expand the ambit of the enabling provisions in the Air Navigation (Hong Kong) Order 1995 to support the proposed revisions to the fees and charges under the Hong Kong Air Navigation (Fees) Regulations.

JUSTIFICATIONS

2. The Government's policy is that fees and charges should in general be set at a level sufficient to recover the full cost of providing the services. The Civil Aviation Department (CAD) has reviewed the fees and charges related to civil aviation under the Hong Kong Air Navigation (Fees) Regulations.¹ Most of the fees under the Hong Kong Air Navigation (Fees) Regulations were last adjusted in 1986².

¹ CAD has also reviewed the fees payable for the grant of noise certificates and the issue of duplicate noise certificates under the Civil Aviation (Aircraft Noise) (Certification) Regulations. Such fees will be amended by the Civil Aviation (Aircraft Noise) (Certification) (Amendment) Regulation 2011 to be made by the Secretary for Financial Services and the Treasury under Section 29A(1) of the Interpretation and General Clauses Ordinance by virtue of section 9 of the Civil Aviation (Aircraft Noise) Ordinance.

² The exceptions are certain examination fees in connection with flight crew licensing (last revised in 1990) and the maximum fee for aerodrome licensing (last revised in 1998).

3. At present, the fees and charges levied for some of the services do not recover all the costs of the services provided, with the cost recovery rates ranging from 5% to about 80%. Also, some services, such as approval of flight simulators and examinations for aircraft maintenance engineer licences, are being provided free of charge to the aviation industry. The fee proposals aim to achieve the full cost recovery principle for services provided by the Government.

4. Three existing fee items are over-recovering, while the fee for the renewal of the certificate of validation of a licence has become obsolete. The opportunity would be taken to adjust the over-recovery fees to the respective full costs in one go, while deleting the obsolete fee. CAD has also streamlined the structure of a number of fee items for applications that involved similar work processes.

5. The overall cost recovery rate of the existing fees and charges is about 91.5%. Full cost recovery will be achieved upon the full implementation of the fee proposals.

6. The fee proposals would not have a significant impact on the aviation industry, nor would they undermine Hong Kong's competitiveness as an aviation hub in the region. The fees should not be an undue financial burden on the operation of the airlines, as they only represent less than 1% of the aircraft operator's total operating expenses. The percentages would be smaller in the case of some larger aircraft operators in Hong Kong.

7. Details of the proposals to amend these fees and charges ("the fee proposals") are set out at **Annex B**. The assessment of the impact of the fee proposals on the relevant stakeholders is set out in **Annex C**.

8. We need to expand the ambit of the enabling provisions in the Air Navigation (Hong Kong) Order 1995 to support the fee proposals.

THE AMENDMENT ORDER

9. The Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011, which is proposed to come into operation on 16 December 2011, seeks to amend Article 97 of the Air Navigation (Hong Kong) Order 1995 to enable the Chief Executive to –

- (a) prescribe the fees to be paid in respect of certain air navigation related matters; and

- (b) provide for the payment and refund of any fee prescribed under Article 97(3) of the Order.

THE AMENDMENT REGULATION

10. After the Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011 made by the Chief Executive in Council is gazetted, the Chief Executive may, after consultation with the Executive Council, make the Hong Kong Air Navigation (Fees) (Amendment) Regulation 2011, with the following main provisions –

- (a) providing for the payment of the fees prescribed in the Schedule to the Hong Kong Air Navigation (Fees) Regulations (the Regulations);
- (b) adjusting the level of certain fees prescribed in the Schedule to the Regulations with a view to achieving full cost recovery;
- (c) introducing new fee items in respect of certain matters provided for in the Air Navigation (Hong Kong) Order 1995;
- (d) streamlining the structure of examination fees for the grant or renewal of a licence to act as a flight crew member;
- (e) deleting the fee item for the renewal of a certificate of validation; and
- (f) reflecting the abolition of official flying tests.

LEGISLATIVE TIMETABLE

11. The Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011 will be gazetted on 21 October 2011 and tabled in the Legislative Council on 26 October 2011.

IMPLICATIONS OF THE PROPOSAL

12. The proposal per se has no financial implications from the resource perspective but the fee proposals have financial implications as set out in **Annex D**. No additional staff will be required for implementing the

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proposal and the fee proposals. The proposal and the fee proposals have little economic implications as the additional costs are insignificant compared to the total operating costs of the aviation industry. The proposal and the fee proposals are in conformity with the Basic Law, including provisions concerning human rights. They do not affect the binding effect of the legislation. They also do not have any productivity, environmental or substantial sustainability implications.

PUBLIC CONSULTATION

13. On the fee proposals, we have consulted the Technical Sub-committee of the Aviation Development Advisory Committee, the Airport Authority, the aviation industry including the local airlines, Airline Operators Committee, Board of Airline Representatives, Hong Kong Airline Pilots Association, Hong Kong Region of the Guild of Air Pilots and Air Navigators, as well as other related organisations such as Hong Kong Institution of Engineers, Hong Kong Aviation Club, aircraft maintenance and design organisations, flight training organisations and maintenance training organisations.

14. Some stakeholders, while recognising the user-pays principle, have expressed concern on its application to their particular sectors of the civil aviation industry. We have explained that it is appropriate to apply the principle across the board as CAD's fees are levied on commercial enterprises and professionals.

15. On their concern about the significant percentage increases proposed for certain items (notably the maximum fees for Air Operator's Certificate and for the inspection of a maintenance or design organisation), we have explained that the proposal of spreading the increases over three years is reasonable, which seeks to strike a balance between the users' interests and the Government's policy of full cost recovery. We do not consider it justified to spread the increases over a longer period.

16. On their concern about the details regarding the calculation of CAD's fees and charges in relation to those that are based on the cost of investigations, we have agreed to provide more information in the demand notes in the future, including the number of working hours spent by its staff and any overseas trips involved.

17. On 28 March 2011, we consulted the Legislative Council Panel on Economic Development on the fee proposals. On 27 June 2011, we provided the Panel with more information on the fee proposals. The Panel supported the fee proposals. We assured Members that CAD would regularly review its work procedures to keep the costs of its services to a minimum. On the suggestion of imposing higher charges for the operation of noisier aircraft to address the concerns of the public, we explained that this was not in line with the existing policy.

PUBLICITY

18. A press release will be issued on 19 October 2011. A spokesman will be available to handle enquiries.

BACKGROUND

19. Article 97 of the Air Navigation (Hong Kong) Order 1995 provides that the Chief Executive may make regulations for prescribing the fees to be charged. Such a regulation needs to be amended to provide a basis for the proposed revision of the fees and charges under the Hong Kong Air Navigation (Fees) Regulations.

ENQUIRIES

20. Any enquiry on this brief should be directed to Miss Monica Chen, Principal Assistant Secretary (Transport) (telephone number: 2189 7719).

**Transport and Housing Bureau
19 October 2011**

Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011

(Made by the Chief Executive in Council under sections 2A(2) and 12(2) of the Civil Aviation Ordinance (Cap. 448))

1. Commencement

This Order comes into operation on 16 December 2011.

2. Air Navigation (Hong Kong) Order 1995 amended

The Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) is amended as set out in section 3.

3. Article 97 amended (regulations by the Chief Executive: fees)

(1) Article 97(3), after “inspection”—

Add
“, calculation”.

(2) Article 97(3)—

Repeal
“the grant of any permission or approval”

Substitute
“the grant or variation of any permission, approval or authorization”.

(3) Article 97—

Repeal paragraph (4)
Substitute

“(4) Without limiting section 29 of the Interpretation and General Clauses Ordinance (Cap. 1), if under paragraph (3) regulations prescribe any fees, the regulations may also—

- (a) provide for the manner in which, and the time at which, the fees are to be paid;
 - (b) empower the Director-General of Civil Aviation to specify the manner in which, and the time at which, the fees are to be paid; and
 - (c) provide for the refund of fees.
- (5) For the purposes of paragraph (4)(b), the regulations may empower the Director-General of Civil Aviation—
- (a) to require the payment of a deposit in prescribed circumstances; and
 - (b) to specify the amount of the deposit and the manner in which, and the time at which, the deposit is to be paid.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

This Order amends the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (*principal Order*) to enable the Chief Executive to—

- (a) prescribe the fees to be paid in respect of certain air navigation related matters; and
- (b) provide for the payment and refund of any fee prescribed under Article 97(3) of the principal Order.

Details of Fee Proposals

Fee or maximum fee adjustments to achieve full cost recovery

Three fee items are over-recovering which include the renewal of a Certificate of Airworthiness (COA) for larger aircraft. They should be adjusted downwards to the respective full costs in one go. On the other hand, 48 items are under-recovering, and should be increased in one go except for the following items which are subject to a phased implementation over a three-year period –

- (a) the components of the maximum fee for the grant or variation of an Air Operator's Certificate (AOC);
- (b) the minimum and maximum fees for the inspection of a maintenance or design organisation for the purpose of granting approval of persons; and
- (c) the fees for the issue of a Certificate of Airworthiness, and of a Certificate of Validation of a Certificate of Airworthiness, in the case of a glider or balloon.

Streamlining the structure of the examination fees for the grant or renewal of flight crew licences

2. We propose to streamline the structure of the examination fees for the grant or renewal of flight crew licences. At present, pilots and flight engineers need to pass various examinations to obtain the required qualifications and pay the examination fees. Since the costs of conducting various examinations are similar, we propose to consolidate the examination fees into two items, namely examination in connection with a Private Pilot's Licence and examination in connection with a Professional Pilot's Licence or a Flight Engineer's Licence. Consequential to such consolidation, regulation 5 of the Hong Kong Air Navigation (Fees) Regulations (which relates to official flying tests fees) will be repealed.

Deletion of an obsolete fee item

3. Since CAD no longer renews the certificate of validation of a licence, we propose to delete the fee for the renewal of such a certificate.

New fee items

4. Certain services are being provided free of charge to the industry at present or the charges levied do not recover all the costs of the services involved. To provide the legal basis for recovering the costs of providing these services, we propose to introduce fee items to cover –

- (a) approval of flight simulators;
- (b) approval of training courses, and of persons providing the training, conducting examinations or furnishing reports, for the purpose of licensing of flight crew;
- (c) grant of a flight crew licence where the applicant holds a flight crew licence issued by a jurisdiction outside Hong Kong;
- (d) inclusion of instrument rating or additional aircraft type rating in a pilot's licence;
- (e) inclusion of an endorsement in respect of language proficiency in a pilot's licence;
- (f) approval of training courses, and of persons providing the training, conducting examinations or furnishing reports, for the purpose of licensing of aircraft maintenance engineers;
- (g) examinations for aircraft maintenance engineer licences;
- (h) approval of persons to furnish reports for any purposes in relation to civil aviation; and
- (i) permission to carry dangerous goods or munitions of war, to fly a captive balloon, glider or parascending parachute, to moor an airship, or to conduct parachute jump, low fly, aerial photography or aerial survey.

5. The approval of flight simulators and approval of flight training courses and the related persons for the purpose of flight crew licensing are currently subsumed under the AOC fees. Once these new fee items are created, we will no longer levy these fees as part of the AOC fees.

New provisions on recovery of costs

6. We propose to introduce provisions to provide for the recovery of the cost of investigations conducted in connection with applications¹, regardless of whether the application is approved, withdrawn by the applicant, refused by CAD or otherwise ceases to have effect, and also regardless of whether a deposit has been collected. The fees for these applications are determined by reference to the cost of investigations rather than at fixed rates.

¹ Such applications are submitted under the Air Navigation (Hong Kong) Order 1995. They may be for –

- (a) the grant or variation of an Air Operator's Certificate;
- (b) the issue or variation of a permit for an aircraft to fly without a Certificate of Airworthiness;
- (c) the issue of a Certificate of Airworthiness, or a certificate of validation of a Certificate of Airworthiness, in respect of an aircraft (excluding a glider or balloon);
- (d) the approval of an engine;
- (e) the grant or variation of an approval of a maintenance organisation;
- (f) the approval in respect of aircraft and equipment;
- (g) the issue of an aerodrome licence;
- (h) the approval of a flight simulator;
- (i) the approval of a course of flight training or instruction;
- (j) the authorization or approval of a person for the purposes of flight training or instruction;
- (k) the grant of approval of a person to furnish reports or of any variation of such approval;
- (l) the approval of a course of maintenance training or instruction;
- (m) the authorisation or approval of a person for the purposes of maintenance training or instruction.

Impact on Stakeholders

Air Operator's Certificate (AOC) Holders

The AOC holders would mainly be affected by the increase in the maximum fee for AOC¹ and the reduction in the fee for the renewal of Certificates of Airworthiness (COA).

2. We anticipate that the increase in the maximum fee for AOC would not affect those airlines which are already paying the full costs. At the same time, the reduction in the fee for COA renewal would result in savings ranging from \$0.1 million to \$6 million per annum for these operators.

3. Regarding the other AOC holders which are not currently paying the full cost of investigations, they would be affected by the phased increase in the maximum fee for AOC, partly offset by a reduction in the fee for COA renewal. As compared with the existing fees, we estimate that these operators would pay an additional amount of \$0.1 million to \$1 million in the first year, \$0.3 million to \$1 million in the second year and \$0.6 million to \$1 million in the third year.

Maintenance and Design Organisations

4. The maintenance and design organisations would mainly be affected by an increase in the maximum fee for the inspections conducted by CAD.² An organisation which is currently paying the maximum fee prescribed by law (i.e. \$133,400) might have to pay an additional sum of up to \$59,400 in the first year after the implementation of the fee proposals. The additional sum that such organisation might need to pay will be \$145,100 and \$269,100 in the second and the third years respectively as compared with the existing fee.

¹ The fee for the grant or variation of an AOC is equal to CAD's costs of investigations but subject to a maximum fee calculated in accordance with paragraph 2 of the Schedule to the Hong Kong Air Navigation (Fees) Regulations.

² The fee for the inspections of the maintenance and design organisations is equal to CAD's cost of investigations but subject to the minimum and maximum fees prescribed in paragraph 8 of the Schedule to the Hong Kong Air Navigation (Fees) Regulations.

Maintenance Training Organisations

5. Due to the introduction of new fees for the approval of maintenance training courses and the related persons, a maintenance training organisation would pay an additional sum depending on the scope of investigations conducted by CAD. Based on past experience, the amount could range from \$7,500 for a relatively straightforward case to over \$100,000 for a large organisation.

Flight Training Organisations

6. Due to the introduction of new fees for the approval of flight simulators, flight training courses and the related persons for the purpose of flight crew licensing, a flight training organisation which is not an AOC holder would have to pay a sum ranging from about \$62,000 to \$263,000. The actual amount varies depending on the man-hours required for processing the applications, whether the flight training organisations are located outside Hong Kong, and the type and combination of approvals applied for.

Flight Crew and Aircraft Maintenance Engineers

7. For the licensing of flight crew, a licence applicant would have to pay an additional sum of \$2,400 for a typical professional pilot's licence or \$6,200 for a typical private pilot's licence because of the increase in the examination and licence fees.

8. For the licensing of aircraft maintenance engineers, a person would have to pay an additional sum of \$5,200 in order to obtain a typical aircraft maintenance engineer licence, arising from the introduction of new examination fees and an increase in the licence fee.

Other Stakeholders

9. New fees would be introduced for the permission issued to an airline for the carriage of dangerous goods or munitions of war. Depending on the permission sought, an airline would have to pay between \$785 and \$6,800 to obtain permission with a validity period of two years.

10. New fees would also be introduced for the permission to fly a balloon, glider or parascending parachute, to moor an airship, or to conduct parachute jump, low fly, aerial photography or aerial survey. A person would have to pay \$1,470 for each application.

Implications of Fee Proposals

On financial implications, when the proposed fees and charges revisions are implemented in stages, there will be a net increase in annual revenue of about \$3.5 million in the first year, \$4.5 million in the second year and \$5.9 million in the third year and after, as compared with the existing revenue. CAD regularly reviews its day-to-day management and procedures with a view to reducing the cost of their services through implementing efficiency initiatives and streamlining procedures. Efficiency savings from these efforts have been factored into CAD's proposed revisions of the fees and charges.