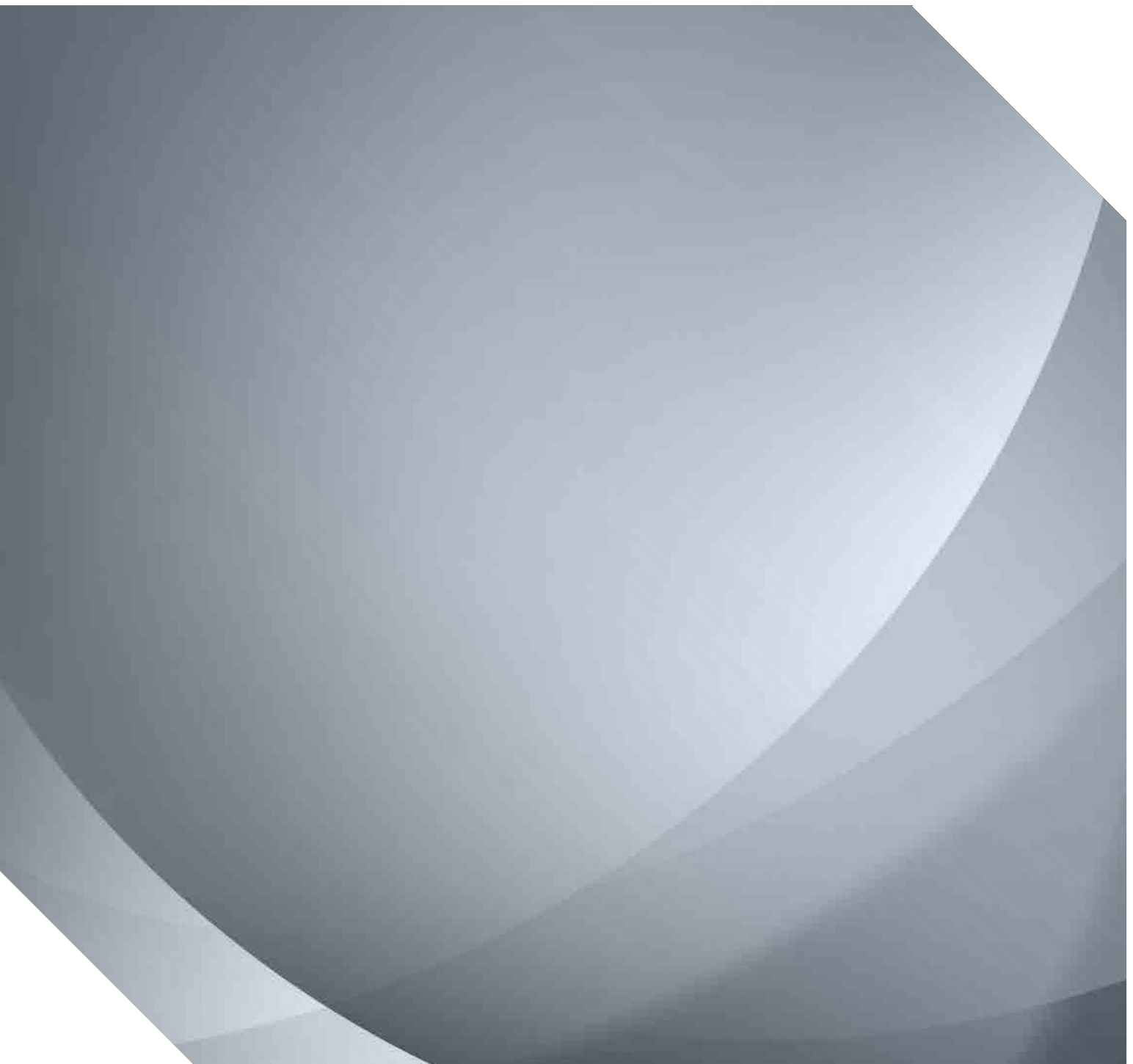


Guidance for applicant: Review of conduct of test or exam

Regulation 6 of the Civil Aviation Authority Regulations 1991

CAP 1049



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Guidance on requesting a review of the conduct of a test or exam

Introduction

1. Under Regulation 6(5) of the Civil Aviation Authority Regulations 1991 (extract attached at Annex A), any person who has failed any test or examination which must be passed before being granted or exercising the privileges of a personnel licence, may request that the CAA reviews the conduct of the test or examination to determine whether it was properly conducted.
2. Such a review is undertaken by non-executive Members of the CAA Board who are appointed by the Secretary of State for Transport.

How do I request a review?

3. A review must be requested within 14 days after being notified of the failure.
4. The notification of failure will normally provide details on whom to contact to request a review.

What happens next?

Applicant requests review	The applicant may within 14 days of a decision or proposal request a review.
The applicant is notified of the timetable for the review	A Review Panel Lawyer is appointed to manage the review and will write to the applicant with details of the review including the timetable for submissions.
Applicant sends to CAA representations	Applicant sets out the grounds on which they consider the test or exam was not properly conducted. These must be sent within 21 days of notification of failure request a review.
Brief prepared by CAA SARG	SARG will produce a brief responding to the applicant's case

The applicant may submit a response to the SARG Brief	The applicant may respond to the SARG Brief
Bundle of documents circulated	The Review Panel Lawyer circulates a bundle of documents for the hearing comprising the applicant's representations, SARG Brief and the applicant's response (if any)
Date of hearing fixed	A date for the hearing will be fixed by the Panel appointed to conduct the Review. This date may only be changed in exceptional circumstances.
Review hearing	Review conducted by Members of CAA Board and the decisions normally available within 10 days of the review.

What happens during the review?

5. The applicant will be offered an oral hearing. The hearing may be attended by:
 1. The Panel;
 2. A technical assessor (if one has been appointed);
 3. The Review Panel Lawyer, who advises the Panel;
 4. The applicant;
 5. The applicant's supporters, who may include legal representative and witnesses;
 6. The relevant SARG employee(s);
 7. The SARG Lawyer, who advises the SARG employees;
 8. A shorthand writer who will prepare a transcript of the hearing which will be made available to all parties;
 9. Members of the public unless the hearing is to be in private (see next section).
6. The hearing will be based on the document bundle circulated to the parties (comprising the applicant's representations, SARG Brief and the applicant's response (if any)). The applicant has the opportunity to make oral representations, seek clarification and ask questions of the SARG employees. SARG employees will be given the opportunity to seek clarifications, comment on the oral representations and question the applicant. The last word will go to the applicant.

7. If any new information or arguments are introduced, either by the applicant or SARG employees, which were not contained within the documents, the hearing may be adjourned to allow time for all parties to consider the new issues.
8. A transcript of the hearing will be supplied to applicant.
9. If the applicant decides not to attend or be represented at the oral hearing, the review will be undertaken by the CAA Board Members based on the documents.

Hearing to be in public

10. The hearing will be in public unless either the applicant or SARG request it to be in private and the CAA Board Members are satisfied that it may be held in private in accordance with the provisions of Regulation 6(7A) of the Civil Aviation Authority Regulations (see below).

The decision

11. The Panel must decide whether the examination or test was properly conducted. The Panel is not in a position to decide whether the examinee should have passed or failed. If the Panel decides that the examination or test was not properly conducted, the only consequence can be that the applicant is entitled to a free retest. The Panel may order the failure to be expunged from the applicant's record.
12. The applicant will be informed, in writing, of the decision and the reasons for it, normally within 7 to 10 days of the hearing.

Publication of the decision

13. Normally, decisions will be published in full on the CAA website, including the name of the person or organisation concerned.
14. Two years after the hearing, the report will be disidentified.
15. After a further three years (so five years after the hearing), the report will be removed from the website.
16. Where a hearing has been held in private, there will be redacted any material referring to the matters in respect of which the decision to hold the hearing in private had been based.

17. In addition, representations may be made by an appellant, at the hearing or separately, putting forward reasons why, exceptionally, the decision should not be published in full. Such representations will be considered by the CAA Board Members and their determination notified to the appellant.

Regulation 6 review complaints procedure

18. If you have any complaint concerning the manner in which a review is conducted, you may write to the Office of the General Counsel, Civil Aviation Authority, Aviation House, Beehive Ring Road, Crawley, West Sussex, RH6 0YR, or email: OGCMailbox@caa.co.uk

Office of the General Counsel

Civil Aviation Authority

May 2013

ANNEX A**Extract from the Civil Aviation Authority
Regulations 1991**

Regulation of the conduct of the Authority

6 (1) The functions conferred on the Authority by or under Air Navigation Orders with respect to:

- a) registration of aircraft;
- b) certification of operators of aircraft;
- c) certification of airworthiness of aircraft;
- d) noise certification;
- e) certification of compliance with the requirements for the emission by aircraft engines of unburned hydrocarbons;
- f) personnel licensing;
- g) licensing of aerodromes;
- h) validation of any certificate or licence;
- i) approval of equipment and approval or authorisation of persons;
- j) approval of schemes for the regulation of the flight times of aircraft crew;
- k) receiving reports of reportable occurrences;
- l) making air traffic directions;
- m) making airspace policy directions;

are hereby prescribed for the purposes of section 7(2) of the Act.

(2) Subject to paragraphs (8) and (9) of this regulation, a decision with respect to any of the matters referred to in paragraph (1) of this regulation, being a decision to register, refuse to register, cancel or amend the registration of an aircraft or to grant, refuse to grant, validate, refuse to validate, revoke, suspend, vary or refuse to vary a certificate, licence, approval, authorisation or rating, or make an air traffic direction

or an airspace policy direction may be made on behalf of the Authority only by a member or employee of the Authority.

(3) Subject to paragraphs (8), (9) and (10) of this regulation, where:

- a) it is decided that it would be inexpedient in the public interest for an aircraft to be registered in the United Kingdom; or
- b) an application for the grant, validation or variation of a certificate, licence, approval, authorisation or rating has been refused or granted in terms other than those requested by the applicant;

the Authority shall serve on the applicant a notice stating the reasons for the decision, and the applicant may within 14 days after the date of service of that notice request that the case be reviewed by the Authority.

(4) Subject to paragraphs (8), (9) and (10) of this regulation, where it is proposed to:

- a) cancel the registration of an aircraft on the grounds that it would be inexpedient in the public interest for it to continue to be registered in the United Kingdom; or
- b) revoke, suspend or vary a certificate, licence, approval, authorisation, validation or rating or make an air traffic direction or an airspace policy direction under an Air Navigation Order otherwise than on the application of the holder;

the Authority shall serve on the person concerned notice of the proposal together with the reasons for it, and the person concerned may within 14 days after the date of service of that notice, serve on the Authority a request that the case be decided by the Authority and not by any other person on its behalf.

(5) Any person who has failed any test or examination which he is required to pass before he is granted or may exercise the privileges of a personnel licence may within 14 days after being notified of his failure, request that the Authority determine whether the test or examination was properly conducted.

- (6) a) The function of deciding a case where such a request as is referred to in paragraph (3), (4) or (5) of this regulation has been duly Served on the Authority is hereby prescribed for the purposes of section 7(1) of the Act: and for the purpose of making any decision in such a case a quorum of the Authority shall be one member.
- b) The Authority shall sit with such technical assessors to advise it as the Authority may appoint, but the Authority shall not appoint as an assessor any person who participated in the decision or proposal or in giving or assessing the test or examination which is to be the subject of the Authority's decision.

(7) Where a request under paragraph (3), (4) or (5) has been duly served, the Authority shall, before making a decision:

- a) consider any representations which may have been served on it by the person concerned within 21 days after the date of service of the notice under that paragraph given by the Authority; and
- b) where the person concerned has requested the opportunity to make oral representations in his representations under subparagraph (a) above, afford him an opportunity to make such representations and consider them.

- (7A) a) Where an oral hearing is held it shall be held in public except where the Authority is satisfied that, in the interests of morals, public order, national security, juveniles or the protection of the private lives of the parties a private hearing is required, or where it considers that publicity would prejudice the interests of justice.
- b) The following persons shall be entitled to attend the hearing of an appeal, whether or not it is in private:
- i) a member of the Council on Tribunals or of the Scottish Committee of that Council; and
- ii) any other person which the Authority, with the consent of the parties, permits to attend the hearing.

(8) Nothing in this regulation shall:

- a) prevent the Authority or any person authorised so to act on behalf of the Authority from provisionally cancelling the registration of an aircraft or provisionally suspending or varying any certificate, licence, approval, authorisation, validation or rating granted or having effect under an Air Navigation Order or making a provisional air traffic direction pending inquiry into or consideration of the case;
- b) apply to the variation of a flight manual, performance schedule or other document incorporated by reference in a certificate of airworthiness;
- c) apply where the Authority refuses to register or cancels or amends the registration of an aircraft or refuses to grant or validate, grants or validates in terms other than those requested by the applicant, revokes, suspends or varies a certificate, licence, approval, authorisation or rating pursuant to a direction given by the Secretary of State.

(9) Nothing in paragraphs (2), (3) or (4) of this regulation shall apply:

- a) in respect of a medical certificate or certificate of test or experience relating to a personnel licence;
- b) where pursuant to its duty under section 5 of the Act, the Authority refuses an application for the grant of an aerodrome licence or grants such an application in terms other than those requested by the applicant or proposes to revoke, suspend or vary an aerodrome licence otherwise than on the application of the holder.

(10) Nothing in paragraphs (3) or (4) of this regulation shall apply where the Authority:

- a) refuses an application by the holder of an aerodrome licence for the substitution of an ordinary aerodrome licence for a public use aerodrome licence; or
- b) proposes, otherwise than on the application of the licence holder, to substitute a public use aerodrome licence for an ordinary aerodrome licence.