

UNITED STATES



Treaty Series No. 85 (1978)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of
America amending the Air Services Agreement signed
at Bermuda on 23 July 1977

Washington, 25 April 1978

[The Exchange of Notes is considered to have entered into force on 1 April 1978]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
September 1978*

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**EXCHANGE OF NOTES
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
AMENDING THE AIR SERVICES AGREEMENT SIGNED AT
BERMUDA ON 23 JULY 1977**

No. 1

*Her Majesty's Ambassador at Washington to the Secretary of State
of the United States of America*

*British Embassy,
Washington D.C.*

25 April, 1978.

Sir,

I have the honour to refer to negotiations which have taken place in London and Washington on the question of charter air services in the North Atlantic Market, in accordance with Annex 4 to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning Air Services, signed at Bermuda on 23 July 1977⁽¹⁾ (hereinafter referred to as "the Agreement").

As a result of these negotiations, and in accordance with Article 18 of the Agreement, I now have the honour to propose that Article 14 of the Agreement and Annex 4 to the Agreement (including the Memorandum of Understanding on Passenger Charter Air Services between our two Governments which was regarded as incorporated in that Annex for so long as it remained in force) shall be replaced by the new Article 14 and the new Annex 4 which are attached to this Note. In consequence of these amendments, I further propose that in paragraphs (3) and (4) of Article 2 of the Agreement, the references to "Annex 4" shall be replaced by references to "Article 14".

If the foregoing proposals are acceptable to the Government of the United States of America, I have the honour to propose that the present Note and its enclosures, together with your reply in that sense, shall constitute an Agreement between our two Governments which shall be considered to have entered into force on 1 April 1978.

I avail myself of this opportunity to renew to you, Sir, the assurances of my highest consideration.

PETER JAY
Ambassador

(1) Treaty Series No. 76 (1977) Cmnd. 7016.

ARTICLE 14

Charter Air Service

(1) *Principles*

The Contracting Parties recognize the need to further the maintenance and development, where a substantial demand exists or may be expected, of a viable network of scheduled air services, consistently and readily available, which caters for all segments of demand and particularly for those needing a wide and flexible range of air services. The Contracting Parties also recognize the substantial and growing demand from that section of the travelling public which is price rather than time sensitive for air services at the lowest possible level of fares and rates. The Contracting Parties, therefore, taking into account the relationship of scheduled and charter air services and the need for a total air service system, shall further the maintenance and development of efficient and economic charter air services so as to meet that demand. They shall, accordingly, while continuing their efforts to achieve a multilateral arrangement for charter air services in the North Atlantic market, apply the following bilateral provisions to charter air services.

(2) *Application of Articles*

Articles 1, 2 (paragraphs (1), (3) and (4)), 4, 5, 6, 7, 8 (except that paragraph (3) shall apply only to the extent authorized by the aeronautical authorities in the relevant territory), 9 and 10 of this Agreement shall apply to international charter air services conducted by airlines of the Contracting Parties between the territories of the Contracting Parties.

(3) *Grant of Rights*

(a) Each Contracting Party, in addition to the rights granted in paragraph (1) of Article 2, grants to the other Contracting Party the right for its airlines designated and authorized under the provisions of paragraph (4) of this Article (hereinafter referred to as "charter-designated airlines") to uplift and discharge international charter traffic in passengers (and their accompanying baggage) and international charter traffic in cargo between:

- (i) on the one hand, any point or points in the United States; and
- (ii) on the other hand, any point or points in the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the United Kingdom").

Such traffic may be carried either directly or via intermediate or beyond points in other countries with or without stopovers.

(b) Charter air services:

- (i) having their origin outside the United States and the United Kingdom; or
- (ii) operated by an airline of the United Kingdom, having their origin in the United States and a traffic stop or stops outside the United States without a stopover in the United Kingdom lasting for at least two consecutive nights; or

- (iii) operated by an airline of the United States, having their origin in the United Kingdom and a traffic stop or stops outside the United Kingdom without a stopover in the United States for at least two consecutive nights

shall not be covered by this Article.

(4) *Designation and Authorization*

(a) Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the international charter air services covered by paragraph (3)(a) of this Article and to withdraw or alter such designations. Such designations shall be made in writing and shall be transmitted to the other Contracting Party through diplomatic channels.

(b) On receipt of such a designation made by one Contracting Party, and on receipt from the airline so designated of an application or applications in the form and manner prescribed, the other Contracting Party shall, with the minimum of formality and administrative burden upon the airline so designated, grant the appropriate operating authorizations and technical permissions, provided:

- (i) substantial ownership and effective control of that airline are vested in the first Contracting Party or in its nationals;
- (ii) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party considering the application or applications; and
- (iii) the other Contracting Party is maintaining and administering the standards set forth in Article 6 (Airworthiness) of this Agreement.

(c) If the aeronautical authorities of the Contracting Party considering the application or applications are not satisfied that these conditions are met at the end of a 60-day period from receipt of the application or applications, either Contracting Party may request consultations, which shall be held within 30 days of the receipt of the request.

(d) When an airline has been designated and authorized in accordance with the above terms, it may operate the charter air services described in paragraph (3)(a) of this Article provided that the airline complies with the applicable provisions of this Agreement.

(5) *Fair Competition*

(a) There shall be a fair opportunity for the designated and charter-designated airlines of both Contracting Parties to compete in international air services.

(b) Each Contracting Party shall afford the charter-designated airlines of the other Contracting Party an equal opportunity to compete with its charter-designated airlines.

(c) Each Contracting Party shall take into consideration the interests of the airlines of the other Contracting Party so as not to affect unduly their opportunity to offer the services covered by this Agreement.

(d) Each Contracting Party shall apply, on a non-discriminatory basis as between the charter-designated airlines of the two Contracting Parties and as among different charter-designated airlines of the other Contracting Party:

- (i) its own charterworthiness rules, administered and enforced by its own aeronautical authorities (hereinafter referred to as "charterworthiness rules");
- (ii) such agreed charterworthiness requirements as may be set forth in Annex 4 (hereinafter referred to as "charterworthiness requirements"); and
- (iii) the provisions of paragraph (7) of this Article.

(e) Neither Contracting Party shall unilaterally restrict the charter operations of the charter-designated airlines of the other Contracting Party or impose limitations on the volume, frequency or regularity of charter air services of charter-designated airlines of the other Contracting Party, except according to the terms of this Agreement or under uniform conditions consistent with Article 15 of the Convention.

(f) The charterworthiness rules of each Contracting Party and the charterworthiness requirements of Annex 4 shall preserve opportunities for charter air services to compete with scheduled air services. Where the Contracting Parties approve adjustments in scheduled fares or rates or tariff conditions which adversely affect the ability of charter air services to compete with scheduled air services, either Contracting Party may request consultations, which shall be held within 60 days, with a view toward adjusting charter rules and requirements to preserve fair competitive opportunities for charter air services.

(g) The Contracting Parties individually shall preserve opportunities for scheduled air services to compete with charter air services. Where charterworthiness rules or requirements or charter prices or rates adversely affect the ability of scheduled air services to compete with charter air services, either Contracting Party may request consultations, which shall be held within 60 days, with a view toward preserving fair competitive opportunities for scheduled air services.

(6) *Charterworthiness*

Except as otherwise provided in Annex 4, each Contracting Party shall accept as charterworthy traffic originating in the country of the other Contracting Party and complying with the charterworthiness rules of the other Contracting Party in effect on the date of outbound departure of the flight.

(7) *Flight or Program Approvals*

(a) Each Contracting Party shall minimize the administrative burdens of filing requirements and procedures on charterers and on charter-designated airlines of the other Contracting Party.

(b) A charter-designated airline of one Contracting Party proposing to carry charter traffic originating in the country of the other Contracting Party

may be required by the other Contracting Party to file charter programs in advance, so that the other Contracting Party may determine whether the programs meet its charterworthiness rules.

(c) Subject to the limitations on information about traffic originating in the country of the other Contracting Party set forth in sub-paragraph (d) of this paragraph, a charter-designated airline of one Contracting Party proposing to carry charter traffic originating in either country may be required by the other Contracting Party to file information about charter programs in advance, so that the other Contracting Party may determine whether the programs meet such charterworthiness requirements as Annex 4 may contain.

(d) Except as may be otherwise provided in Annex 4, neither Contracting Party shall require a charter-designated airline of the other Contracting Party, which plans to carry charter air traffic originating in the country of the other Contracting Party, to submit more than the following information with regard to such traffic:

- (i) a declaration of conformity with paragraph (6) of this Article and, if applicable, Annex 4;
- (ii) the itinerary (dates, times, and points to be served) plus charter categories of each flight;
- (iii) the identity of the charterer or charterers;
- (iv) the number of seats, volume or tonnage contracted for by each charterer, by charter category;
- (v) a description of any tours where there is a mandatory tour package; and
- (vi) the price or rate charged by the airline to each charterer.

(e) Notwithstanding subparagraph (d) of this paragraph, each Contracting Party may require that a charter-designated airline of the other Contracting Party provide such advance information with regard to charter flights as is essential for customs, airport, and air traffic control purposes.

(f) Charter-designated airlines shall comply with established and non-discriminatory procedures in regard to airport slotting and shall provide prior notification of flights or series of flights to the relevant authorities if so required.

(g) Neither Contracting Party shall require prior approval of charter flights by charter-designated airlines of the other Contracting Party except as provided in subparagraph (b) of this paragraph.

(h) Neither Contracting Party shall require prior notifications of information by charter-designated airlines of the other Contracting Party except as provided in subparagraphs (c), (d), (e) and (f) of this paragraph.

(8) *Prices and Rates*

(a) Each Contracting Party may require the filing with its aeronautical authorities of prices or rates to be charged by charter-designated airlines of

the other Contracting Party. If it is dissatisfied with the prices or rates so filed, it shall so notify the other Contracting Party as soon as possible, and in any event within 30 days of receiving notification of the price or rate. The other Contracting Party may request consultations which shall be held as soon as possible, and in no event later than 30 days of the receipt of the request. If the matter cannot be resolved by consultation, the Contracting Party objecting to the price or rate may take appropriate action to prevent use or charging of such price or rate, but only insofar as the price or rate applies to traffic originating in its country.

(b) A Contracting Party shall not regulate the prices or rates charged by charterers to the public for charter traffic originating in the country of the other Contracting Party.

(9) Enforcement

(a) Pursuant to paragraph (6) of this Article, the Contracting Party in whose country the charter air traffic originates shall have exclusive responsibility for the enforcement of its charterworthiness rules.

(b) The Contracting Party in whose country the charter traffic originates shall have primary responsibility for the enforcement of such charterworthiness requirements as Annex 4 may contain.

(c) The Contracting Parties shall cooperate with each other on enforcement matters :

(i) Where evidence is obtained of a possible violation of the charterworthiness rules of the other Contracting Party with regard to traffic originating in the country of the other Contracting Party, a Contracting Party shall transmit such evidence to the other Contracting Party for investigation and appropriate enforcement action, instead of interrupting the return flight or inconveniencing traffic which originated in the country of the other Contracting Party.

(ii) Where evidence is obtained of a possible violation of the charterworthiness requirements with regard to traffic originating in the country of the other Contracting Party, a Contracting Party shall transmit such evidence to the other Contracting Party for investigation and appropriate enforcement action, instead of interrupting the return flight or inconveniencing traffic which originated in the country of the other Contracting Party. In exceptional circumstances, however, where the first Contracting Party is not satisfied that investigation or appropriate enforcement action has been carried out by the other Contracting Party, it may take appropriate enforcement action itself.

(d) Each Contracting Party may take such steps as it considers necessary to regulate the conduct of its own charterers organizing services covered by this Article. Such regulations shall, however, not preclude or limit the power of the other Contracting Party to regulate within its country and pursuant to its domestic laws, the conduct of charterers of either Contracting Party.

ANNEX 4

Charter Air Service Provisions

(1) *Passenger Charterworthiness Requirements*

(a) Each Contracting Party may require conformity of passenger charter air traffic originating in the country of the other Contracting Party with the provisions and criteria of this paragraph. Although a Contracting Party may not require prior approval of flights in order to enforce the provisions and criteria of this paragraph, it may, as a condition upon the exercise of the rights granted under paragraph (3) (a) of Article 14 of this Agreement, prescribe the operation of charters unless the information set forth in paragraph (7) (d) of Article 14 has been received in sufficient time prior to the flight arrival to judge conformity with this paragraph. Its aeronautical authorities may also notify a charter-designated airline that they have determined that a particular flight or series of flights is not in conformity with this Annex for a specified detailed reason or reasons, and further that such flight or flights may not be operated unless such authorities subsequently inform the airline that the flight or flights so conform. Both Contracting Parties anticipate that such challenges will be exceptional and agree to consult should they become frequent.

(b) Each Contracting Party may require that all passenger charter air traffic referred to in subparagraph (a) of this paragraph conforms to the following criteria:

- (i) Each charterer shall have purchased not less than 20 seats per charter category in subparagraph (c) of this paragraph; and
- (ii) No more than three charter categories as set forth in subparagraph (c) of this paragraph shall be commingled in the same aircraft.

(c) Each Contracting Party may require that all passenger charter air traffic referred to in subparagraph (a) of this paragraph also conforms to the requirements of one of the following categories (to be selected by the relevant charter-designated airline):

- (i) *Category A.* Travel is offered for sale to the general public or a selected segment of the public without a mandatory tour package. All passengers shall be named on an advance list at least 21 days before the planned date of flight departure, except that 10 percent of the seats of this category contracted for by each charterer on each flight may be occupied by unlisted passengers substituted for those on the advance list referred to above. No substitute passengers shall be accepted in the five days immediately preceding the planned date of flight departure. All passengers shall be sold a return (round-trip) charter journey, the minimum duration of which shall be seven days counting the day on which the originating flight is scheduled to take off and the day on which the returning flight is scheduled to land.
- (ii) *Category B.* Travel is offered for sale to the general public or a selected segment of the public with a mandatory tour package

which includes charter air transportation and sleeping accommodation for at least three nights. All passengers shall be named on an advance list at least 15 days before the planned date of flight departure, except that in each group contracted for, two seats may be occupied by passengers who are substituted for persons on the advance list up to the five days immediately preceding flight departure. All passengers shall be sold a return (round-trip) charter journey, the minimum duration of which shall be seven days counting the day on which the originating flight is scheduled to take off and the day on which the returning flight is scheduled to land.

- (iii) *Category C.* The entire cost of the charter air transportation is borne by the charterer and not by individual passengers, directly or indirectly.
- (iv) *Category D.* Travel is offered for sale by specially authorized charterers solely to military personnel and civilian employees of military departments, and their immediate families.
- (v) *Category E.* Travel is provided to and from an event which at least one Contracting Party considers to be a "special event", where the charterer demonstrates that the date or place of the event were not known and could not have been known in time for the charter to be operated as a Category A charter.
- (vi) *Category F.* The charter is a "Buy In" Sales Incentive charter which would be in Category C but for the charterer allowing some or all passengers to pay in whole or in part in sales credit script.

(d) Notwithstanding paragraph (7)(d) of Article 14, advance lists and lists showing substituted passengers (alphabetically arranged so far as possible) for both Category A and Category B charters originating in the country of one Contracting Party may be required by the aeronautical authorities of the other Contracting Party as follows:

- (i) Advance lists may be required with proof of despatch 21 days (for Category A) and 15 days (for Category B) prior to the day on which the originating flight is scheduled to land;
- (ii) Receipts of lists showing substituted passengers for Category A and Category B charters (containing the names of both substitute and substituted passengers) may be required by the aeronautical authorities of the other Contracting Party five days prior to the day on which the originating flight is scheduled to land. Such lists may be transmitted by telex or other suitable means;
- (iii) On flights where advance listed and non-advance listed charter categories are commingled, receipt of a list of the passengers of non-advance listed charter categories may be required by the aeronautical authorities of the other Contracting Party five days prior to the day on which the originating flight is scheduled to land.

(2) *Cargo Charters*

(a) The Contracting Parties agree that international charter traffic in cargo constitutes an important transportation service and that liberal provisions concerning cargo charters should be included in this Agreement.

For this purpose the Contracting Parties agree to continue negotiations concerning cargo charters with the objective of concluding a more liberal and comprehensive agreement on this matter by 31 March 1979. In this interim period the Contracting Parties agree to permit international cargo charter operations between their two countries in accordance with the terms of this paragraph, and with all other terms of this Agreement not inconsistent with this paragraph.

(b) Each Contracting Party shall permit the following categories of cargo charters:

- (i) *Sole use/single entity cargo flights.* The sole purpose of each flight shall be the carriage of cargo consigned by a single person (other than a forwarder, consolidator, or shippers' association) who has contracted for the exclusive use of the carrying capacity of the aircraft.
- (ii) *Specialist cargo flights.* The sole purpose of each flight shall be the carriage (separately or in combination) of livestock, bloodstock, or out-of-gauge (outside) cargo.
- (ii) *Other cargo flights.* For traffic originating in the United States, other cargo charters shall be permitted to the extent that the carrying capacity of the aircraft is exclusively purchased for cargo carriage by a single person. The term "person" for this purpose shall include a forwarder, consolidator, or shippers' association. For traffic originating in the United Kingdom, other cargo charters shall be permitted to the extent that the sole purpose of each flight is the carriage of cargo in which each of the individual consignments exceeds either 1,000 kilograms in weight or 7 cubic meters in volume.

(c) Each Contracting Party may limit carriage prior to 31 March 1979 by each charter-designated airline under category (iii) of subparagraph (b) to no more than 1,000 tonnes of cargo in each direction between the United States and the United Kingdom, of which no more than 250 tonnes may be carried in each direction between any point in column A and any point in column C as shown in United Kingdom routes 10, 11 and 12 of Section 4 of Annex I except for the gateway route segment London-New York. There shall be no weight limitation on flights in category (i) or category (ii) of subparagraph (b).

(d) No passengers shall be carried for compensation on any cargo charter flights other than ancillary attendants responsible for care or protection of cargo.

(e) In accordance with paragraph (5)(g) of Article 14 of this Agreement, the Contracting Parties agree that designated airlines shall have the opportunity to meet, on a timely basis, prices or rates charged or proposed to be charged by charterers or by charter-designated airlines for carriage of cargo. Similarly, in accordance with paragraph (5)(f) of Article 14, charter-designated airlines shall have comparable opportunity to respond to competitive offers by designated airlines for such carriage. The Contracting

Parties shall therefore administer their tariff requirements and the provisions of Article 12 and paragraph (8) of Article 14 of this Agreement in a liberal and flexible manner so as to ensure compliance with the above obligations.

(f) The Contracting Parties agree to consider amendments to or exemptions from the provisions of this paragraph in the course of the negotiations referred to in subparagraph (a) of this paragraph.

(3) *Modification and Waivers*

(a) If either Contracting Party wishes to propose any modification of the agreed charterworthiness requirements set forth above, it shall inform the other, and the other Contracting Party may accept or reject such proposal. If accepted, the modification shall take effect for the purposes of this Annex on an agreed date. If rejected, either Contracting Party may request consultations which shall be held within 60 days. Modification of the agreed charterworthiness requirements shall not come into effect for the purposes of this Annex unless accepted or agreed between the Contracting Parties by an Exchange of Notes.

(b) In any twelve-month period beginning 1 April, each Contracting Party may, in respect of its own originating traffic within the scope of this Annex, grant waivers of the charterworthiness requirements up to three percent of the number of charter flights operated between the United Kingdom and the United States, during the immediately preceding twelve-month period and the other Contracting Party shall accept as charterworthy traffic carried pursuant to such waivers duly notified to it.

(4) *Directional Balance*

Neither Contracting Party shall require that charter-designated airlines of the other Contracting Party balance the volume of charter traffic they originate in the country of the first Contracting Party with the volume of charter traffic they originate in their home country.

(5) *Amendment*

If a multilateral agreement or arrangement concerning charter air transportation accepted by both Contracting Parties enters into force, Article 14 of this Agreement and this Annex shall be amended so as to conform with the provisions of the multilateral agreement.

(6) *Termination*

Subject to Article 19 (Termination) of this Agreement, this Annex shall remain in force until 31 March 1980. Upon the request of either Contracting Party, consultations shall be held within 30 days to review the operation of this Annex and to decide as to its revision or modification. In any event, the Contracting Parties shall for these purposes enter into consultations not later than 31 December 1979. If the Contracting Parties do not agree on revision or modification, paragraphs (1) to (5) inclusive of this Annex shall terminate on 31 March 1980. If such paragraphs terminate and are not revised or modified, each Contracting Party shall thereupon be entitled, for the purposes of Article 14 of this Agreement, to impose on charter air traffic covered by paragraph (3) of Article 14 such charter-

worthiness rules and such conditions in regard to prices and rates as it considers necessary.

No. 2

*The Secretary of State of the United States of America to
Her Majesty's Ambassador at Washington*

*Department of State,
Washington.*

April 25, 1978.

Excellency:

I have the honor to acknowledge receipt of your Note of today's date which reads as follows:

[As in No. 1]

In reply, I have the honor to inform Your Excellency that the Government of the United States of America agrees to the terms of the new Article 14 and the new Annex 4 and also agrees that your Note and its enclosures, together with this reply, shall constitute an agreement between our two Governments which shall be considered to have entered into force on 1 April 1978.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

JULIUS L. KATZ.