PROCEDURES FOR APPEALING THE CAA DECISIONS ON LICENSING

1.0 PURPOSE

This Order is issued to provide guidance on procedures for appealing the CAA decision on licensing under the Civil Aviation (Personnel Licensing) Regulations, as amended.

2.0 REFERENCES

2.1 Regulations 204 of the Civil Aviation (Personnel Licensing) Regulations, as amended;

3.0 GUIDANCE AND PROCEDURES

3.1 Case presentation and appeal

In keeping with the fair and firm concept, the following is one way to demonstrate to the industry that the CAA has developed a procedure for appeal purposes to ensure a fair opportunity is available to every person who is alleged to have committed an offense.

3.1.1 Function of the Appeals Tribunal (AT)

The Appeals Tribunal shall sit as a judicial authority for the determination of appeals from decisions of the licensing authority.

3.1.2 Burden of Proof

At an Appeals Tribunal hearing, or a case presented to the Director General in application for a sanction to be imposed, the burden of proof is on the Minister except in the case of decision not to renew a licence on medical grounds. The standard of proof that must be established is simply proof based upon Medical expert testimony.

3.1.3 Case Presentation Officer (CPO) – Legal Department.

A CPO makes representation to the Director General on the initial application to have a penalty imposed upon an alleged offender. The CPO is also normally present during any interview where a negotiated settlement is being sought.
The CPO represents the Director General at AT hearings, presents evidence and makes representations in support of the Minister’s decision under review by the AT.

The responsible manager shall appoint a qualified CPO.

An investigator involved in the case shall not act as CPO. The effectiveness of case presentation can be seriously reduced by having the investigator wear two hats: that of witness and that of case presenter.

An inspector should not be assigned as a CPO unless he or she has received training as a CPO*.

3.1.4 Role of the CAA Inspector

Any CAA inspector may be called on to give testimony at the AT review, or in a judicial review either as an eyewitness or as an expert witness. Eyewitnesses attempt to reconstruct a series of events that occurred at a particular point in time. Expert witnesses, on the other hand, give opinion evidence based on their education and experience and attempt to assist the AT member, or court to understand the evidence or to make a finding of fact based on the expert opinion.

3.1.5 Written Reasons for Determination

On receipt of a review determination, the responsible manager shall forward a copy to the DG.

3.1.6 Minister’s Decision Confirmed

Where the appeals tribunal (AT) member confirms the Minister’s decision, the CPO shall note the effective date of the suspension or the time for payment of a penalty and inform the responsible manager.

3.1.7 Request for Reconsideration - Immediate Threat

In the case of a suspension on the grounds of an immediate threat to aviation safety, on review, the AT member may determine the matter by confirming the suspension or by substituting the AT member’s determination for the decision of the Minister.

Where no appeal from the confirming determination is requested or when the AT confirms the suspension on an appeal, the KAD holder may request a reconsideration from the Minister. The responsible manager is responsible for the reconsideration.

If an appeal was requested and the AT referred the matter back to the Minister for reconsideration, DG is responsible for the reconsideration.

3.1.8 Appeal of a AT Review Determination

An appeal by an Air Operator shall be considered where the AT:
(a) erred in law when making a determination or an order, whether or not the error appears on the face of the record;

(b) based its determination or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for material before it;

(c) introduced new evidentiary procedures that are disputable or require clarification;

(d) exceeded its jurisdiction or refused to exercise its proper jurisdiction; or

(e) decided inappropriately the issue as to sanction or based its determination on irrelevant considerations, in light of the severity of the contravention.

(f) An appeal by the alleged offender of a AT review determination shall not be considered when the alleged offender fails to attend the AT review without suitable justification.

3.1.8 Enforcement Division Appeal Process

If the responsible manager is of the opinion that there are grounds to appeal an AT review determination, the following process shall apply:

(a) on receipt of a AT review determination, a copy of the determination must be forwarded to the DG immediately;

(b) the responsible manager shall consult with the DG, immediately to determine whether any of the grounds to appeal as set out above apply. If there are grounds to appeal and the responsible manager is of the view that the interests of aviation safety would be served by appealing the AT review determination, the responsible manager shall forward a written recommendation for an appeal, with verbal confirmation of receipt, to the DG.

(c) The DG, shall, in consultation the LD, consider the recommendation and related advice provided by the, Legal Services.

4.0 RESULTS

Completion of this task results in the suspension, revocation or re-instatement of a licence, certificate, rating or authorization.

5.0 FUTURE ACTIVITIES

A person may return for re-instatement of a licence, certificate, rating or authorization.

Civil Aviation Authority