



Treaty Series No. 13 (2015)

# Exchange of Notes

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea to amend the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea for Air Services between and beyond their respective Territories.  
Done at Seoul, on 5 March 1984

London 8 December 2014 and 4 February 2015

[The Exchange of Notes entered into force on 4 February 2015]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
June 2015*



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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 REPUBLIC OF KOREA TO AMEND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES, DONE AT SEOUL ON 5 MARCH 1984**

**No.1**

*His Excellency Ambassador Extraordinary and Plenipotentiary of the Republic of Korea in London to the Secretary of State for Foreign and Commonwealth Affairs*

*9 December 2014*

Excellency,

I have the honor to refer to the Agreement between the Government of the Republic of Korea and the Government of the United Kingdom of Great Britain and Northern Ireland for Air Services between and beyond their respective Territories done at Seoul on 5 March 1984<sup>1</sup> as amended (hereinafter referred to as “the Agreement”).

In accordance with Article 14 of the Agreement I have the honor to propose, on behalf of the Government of the Republic of Korea, the following amendment to the Agreement:

1. The title of the Aeronautical Authority of the Republic of Korea in paragraph (b) of Article 1 (Definitions) shall be amended to read “the Minister of Land, Infrastructure and Transport”.
2. The following new Articles, with the texts attached as Annex 1 to this Note, shall be included in the Agreement:
  - (i) Article 6A (Applicability of Laws and Regulations);
  - (ii) Article 9B (Security);
  - (iii) Article 9C (Groundhandling);
  - (iv) Article 9D (User Charges); and
  - (v) Article 9E (Regulatory Control).
3. The following amended Articles, with the texts attached as Annex 2 to this Note, shall replace the existing Articles in the Agreement:
  - (i) Article 4 (Designation and Authorisation);
  - (ii) Article 5 (Revocation or Suspension of Operating Authorisations);

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<sup>1</sup> Treaty Series No.47 (1984) Cmnd 9263

- (iii) Article 7 (Fair Competition and State Aids);
- (iv) Article 8 (Tariffs);
- (v) Article 10 (Transfer of Earnings); and
- (vi) Article 11 (Airline Representation and Sales).

4. Note (3) to the Korean Route in the Route Schedule of the Agreement shall be replaced by the text of a new Note (3) which is attached as Annex 3 to this Note.

I have further the honor to inform Your Excellency that the Government of the Republic of Korea has completed its internal procedures for the aforementioned amendment of the Agreement, and to propose that this Note together with its Annexes and Your Excellency's reply indicating acceptance and informing the Government of the Republic of Korea that there are no internal procedures of the Government of the United Kingdom of Great Britain and Northern Ireland required for the aforementioned amendment to the Agreement, shall constitute an agreement amending the Agreement, which shall enter into force on the date of Your Excellency's reply, in accordance with Article 14 of the Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

## Annex 1

### ARTICLE 6A

#### **Applicability of Laws and Regulations**

- (1) Subject to the terms of this Agreement, the laws and regulations of one Contracting Party governing entry into or departure from its territory of an aircraft engaged in international air navigation or flights of such aircraft over that territory shall be applied to the aircraft of the designated airlines of the other Contracting Party.
- (2) Subject to the terms of this Agreement, and in particular the specific provisions of Articles 7 (Fair Competition and State Aids), 10 (Transfer of Earnings) and 11 (Airline Representation and Sales), the laws and regulations of one Contracting Party governing entry into, stay in, transit through or departure from its territory of passengers, crew, cargo and mail, such as those concerning the formalities of entry and exit, of emigration and immigration, customs, currency, medical and quarantine measures, shall be applied to the passengers, crew, cargo or mail carried by the aircraft of the designated airlines of the other Contracting Party while within the territory of the first Contracting Party.

### ARTICLE 9B

#### **Security**

- (1) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Montreal Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 and any aviation security agreement that becomes binding on both Contracting Parties.
- (2) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

- (3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties; they shall require that their airlines and the operators of airports in their territory act in conformity with such aviation security provisions.
- (4) Each Contracting Party agrees that its airlines may be required to observe the aviation security provisions referred to in paragraph (3) above required by the other Contracting Party for entry into the territory of that other Contracting Party. For departure from, or while within, the territory of the United Kingdom, airlines shall be required to observe aviation security provisions in conformity with European Union law. For departure from, or while within, the territory of the Republic of Korea, airlines shall be required to observe aviation security provisions in conformity with the law in force in that country. Each Contracting Party shall ensure that adequate security measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading; and that those measures are adjusted to meet any increased threat to the security of civil aviation. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
- (5) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.
- (6) With full regard and mutual respect for each other's sovereignty, a Contracting Party may adopt security measures for entry into its territory. Where possible, that Contracting Party shall take into account the security measures already applied by the other Contracting Party and any views that the other Contracting Party may offer. Each Contracting Party recognises, however, that nothing in this Article limits the right of a Contracting Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.
- (7) A Contracting Party may take emergency measures to meet a specific security threat. Such measures shall be notified immediately to the other Contracting Party.
- (8) Without prejudice to the need to take immediate action in order to protect transport security, the Contracting Parties affirm that, when considering security measures, a Contracting Party shall evaluate possible adverse effects on international air transport and, unless constrained by law, shall take such factors into account when it determines what measures are necessary and appropriate to address those security concerns.

- (9) Each Contracting Party may request consultations at any time concerning security standards adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, that Contracting Party may request immediate consultations with the other Contracting Party. Failure to reach a satisfactory resolution within fifteen (15) days from the date of such request shall constitute grounds to revoke, suspend or limit the operating authorisation and technical permissions of an airline or airlines of the other Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of fifteen (15) days.

## **ARTICLE 9C**

### **Groundhandling**

Subject to the laws and regulations of each Contracting Party including, in the case of the United Kingdom, European Union law, each designated airline shall have in the territory of the other Contracting Party the right to perform its own groundhandling (“self-handling”) or, at its option, the right to select among competing suppliers that provide groundhandling services in whole or in part. Where such laws and regulations limit or preclude self-handling and where there is no effective competition between suppliers that provide groundhandling services, each designated airline shall be treated on a non-discriminatory basis as regards their access to self-handling and groundhandling services provided by a supplier or suppliers.

## **ARTICLE 9D**

### **User Charges**

- (1) For the purpose of the following paragraphs, the term “user charge” means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities (including facilities for overflights), or related services and facilities, for aircraft, their crews, passengers and cargo.
- (2) User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be imposed on the airlines of the other Contracting Party on terms no less favourable than the most favourable terms available to any other airline at the time the charges are imposed.
- (3) User charges imposed on the airlines of the other Contracting Party may reflect, but not exceed, the full cost to the competent charging authorities or bodies of providing appropriate and not excessive airport, airport environmental, air navigation and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

- (4) Each Contracting Party shall make its best efforts to ensure that consultations take place between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and that the competent charging authorities or bodies and the airlines exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (2) and (3) of this Article. Each Contracting Party shall make its best efforts to ensure that the competent charging authorities provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.
- (5) Neither Contracting Party shall be held, in dispute resolutions procedures pursuant to Article 13 of this Agreement (Settlement of Disputes), to be in breach of a provision of this Article, unless:
- (a) it fails to undertake a review, or fails to commission an independent review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable time; or
  - (b) following such a review, it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

## **ARTICLE 9E**

### **Regulatory Control**

Where the United Kingdom has designated an airline whose regulatory control is exercised and maintained by another EU Member State, the rights of the Republic of Korea under Article 9A (Safety) of this Agreement shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other EU Member State and in respect of the operating authorisation of that airline.

## Annex 2

### ARTICLE 4

#### **Designation and Authorisation**

- (1) Each Contracting Party shall have the right to designate one or more airlines for the purpose of operating the agreed services on each of the routes specified in the Route Schedule in the Annex to this Agreement and to withdraw or alter such designations. Such designations shall be made in writing.
- (2) On receipt of such a designation, the other Contracting Party shall grant the appropriate authorisations and permissions with minimum procedural delay, provided:
  - (a) in the case of an airline designated by the United Kingdom:
    - (i) it is established in the territory of the United Kingdom under the Treaty on European Union and the Treaty on the Functioning of the European Union (the “EU Treaties”) and has a valid operating licence from an EU Member State in accordance with European Union law; and
    - (ii) effective regulatory control of the airline is exercised and maintained by the EU Member State responsible for issuing its Air Operator’s Certificate and the relevant aeronautical authority is clearly identified in the designation; and
    - (iii) the airline has its principal place of business in the territory of the EU Member State from which it has received its valid operating licence; and
    - (iv) the airline is owned, directly or through majority ownership, and is effectively controlled by EU Member States or member states of the European Economic Area and/or nationals of such states; and
  - (b) in the case of an airline designated by the Republic of Korea:
    - (i) the Republic of Korea has and maintains effective regulatory control of the airline; and
    - (ii) substantial ownership and effective control of that airline are vested in the Republic of Korea, nationals of the Republic of Korea, or both, and the airline has a valid operating licence issued by the Republic of Korea; and
  - (c) the designated 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;
  - (d) the Contracting Party designating the airline maintains and implements the standards relating to safety and security set out in Article 9A (Safety) and Article 9B (Security) of this Agreement.

- (3) When an airline has been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

## **ARTICLE 5**

### **Revocation or Suspension of Operating Authorisations**

- (1) Either Contracting Party may, after consultation with the other Contracting Party, refuse, revoke, suspend or limit the operating authorisation or technical permissions of an airline designated by the other Contracting Party where:
- (a) in the case of an airline designated by the United Kingdom:
- (i) it is not established in the territory of the United Kingdom under the EU Treaties or does not have a valid operating licence in accordance with European Union law; or
  - (ii) effective regulatory control of the airline is not exercised or not maintained by the EU Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation; or
  - (iii) the airline does not have its principal place of business in the territory of the EU Member State from which it has received its operating licence; or
  - (iv) the airline is not owned, directly or through majority ownership and is not effectively controlled by EU Member States or member states of the European Economic Area and/or nationals of such states; or
  - (v) the airline is already authorised to operate under a bilateral agreement between the Republic of Korea and another EU Member State and the Republic of Korea can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in that other EU Member State, it would be circumventing restrictions on traffic rights imposed by that other agreement; or
  - (vi) the airline holds an Air Operator's Certificate issued by an EU Member State and there is no bilateral air services agreement between the Republic of Korea and that EU Member State, and that EU Member State has denied traffic rights to the airline designated by the Republic of Korea;
- (b) in the case of an airline designated by the Republic of Korea:
- (i) the Republic of Korea is not maintaining effective regulatory control of the airline; or

- (ii) substantial ownership and effective control of that airline are not vested in the Republic of Korea, nationals of the Republic of Korea, or both, or the airline does not have a valid operating licence issued by the Republic of Korea;
  - (c) that airline has failed to comply with the laws or regulations normally and reasonably applied by the Contracting Party granting the rights; or
  - (d) that airline does not comply with the conditions prescribed under this Agreement.
- (2) Nothing in paragraph (1) shall prevent a Contracting Party from revoking, suspending or imposing the conditions mentioned in paragraph (1) without prior consultation if immediate action is required to prevent further infringement of laws or regulations.
- (3) The Republic of Korea shall not discriminate between airlines of EU Member States on the grounds of nationality.

## **ARTICLE 7**

### **Fair Competition and State Aids**

- (1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to compete in operating the agreed services on the specified routes.
- (2) Each Contracting Party shall allow each designated airline to determine the frequency and capacity of the international air transport it offers, according to commercial and market based considerations. Neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other, except according to the terms of this Agreement or by such uniform conditions as may be contemplated by the Convention.
- (3) Neither Contracting Party shall allow its designated airline or airlines, either in conjunction with any other airline or airlines or separately, to abuse market power in a way which has or is likely or intended to have the effect of preventing, restricting or distorting competition or excluding a competitor from a route.
- (4) Neither Contracting Party shall impose on the other Contracting Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.
- (5) Neither Contracting Party shall require the filing of schedules, or operational plans by airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph (2) of this Article. If a Contracting Party requires filings for information purposes, it shall minimise the administrative burdens on air transport intermediaries and on designated airlines of the other Contracting Party of such filing requirements and procedures.

- (6) Neither Contracting Party shall provide or permit state subsidy or support for or to its designated airline or airlines in such a way that would adversely affect the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing the international air transportation governed by this Agreement.
- (7) State subsidy or support means the provision of support on a discriminatory basis to a designated airline, directly or indirectly, by the state or by a public or private body designated or controlled by the state. Without limitation, it may include the setting-off of operational losses; the provision of capital, non-refundable grants or loans on privileged terms; the granting of financial advantages by forgoing profits or the recovery of sums due; the forgoing of a normal return on public funds used; tax exemptions; compensation for financial burdens imposed by the public authorities; or discriminatory access to airport facilities, fuel or other reasonable facilities necessary for the normal operation of air services.
- (8) Where a Contracting Party provides state subsidy or support to a designated airline in respect of services operated under this Agreement, it shall require that airline to identify the subsidy or support clearly and separately in its accounts.
- (9) If one Contracting Party believes that its designated airlines are being subjected to discrimination or unfair practices, or that a subsidy or support being considered or provided by the other Contracting Party for or to the airlines of that other Contracting Party would adversely affect or is adversely affecting the fair and equal opportunity of the airlines of the first Contracting Party to compete in providing the international air transportation governed by this Agreement, it may request consultations and notify the other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held not later than 30 days after receipt of the request, unless otherwise agreed by both Contracting Parties.

## **ARTICLE 8**

### **Tariffs**

- (1) Each Contracting Party shall allow tariffs for air services to be established by each designated airline based upon commercial considerations in the market place. Neither Contracting Party shall require their airlines to consult other airlines about the tariffs they charge or propose to charge for services covered by these arrangements.
- (2) Each Contracting Party may require the filing of any tariff to be charged for carriage between their respective territories by airlines of the other Contracting Party. Filing may be required no more than thirty (30) days before the tariff is proposed to take effect. In individual cases, filing may be permitted on shorter notice than normally required. Tariffs may remain in effect unless subsequently disapproved under paragraphs (4) and (5) below.

- (3) Intervention by the Contracting Parties shall be limited to:
- (a) the protection of consumers from tariffs that are excessive due to the abuse of market power; or
  - (b) the prevention of tariffs whose application constitutes anti-competitive behaviour which has or is likely or intended to have the effect of preventing, restricting or distorting competition or excluding a competitor from the route.
- (4) Each Contracting Party may unilaterally disallow any tariff filed or charged by one of its own designated airlines. However, such intervention shall be made only if it appears to the aeronautical authority of that Contracting Party that a tariff charged or proposed to be charged meets either of the criteria set out in paragraph (3) above.
- (5) Neither Contracting Party shall take unilateral action to prevent the coming into effect or continuation of a tariff charged or proposed to be charged by an airline of the other Contracting Party. If one Contracting Party believes that any such tariff is inconsistent with the considerations set out in paragraph (3) above, it may request consultations and notify the other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held not later than thirty (30) days after receipt of the request. Without mutual agreement the tariff shall take effect or continue in effect.

## **ARTICLE 10**

### **Transfer of Earnings**

Each designated airline may on demand convert and remit local revenues in excess of sums locally disbursed to the country of its choice. Prompt conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

## **ARTICLE 11**

### **Airline Representation and Sales**

An airline which:

- (a) is incorporated and has its principal place of business in the territory of one Contracting Party or an EU Member State; and
- (b) holds a current Air Operator's Certificate issued by the aeronautical authority of that Contracting Party or an EU Member State;

may:

- (i) in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff which the airline reasonably considers necessary for the provision of air services;
- (ii) use the services and personnel of any other organisation, company or airline operating in the territory of the other Contracting Party;
- (iii) establish offices in the territory of the other Contracting Party; and
- (iv) engage in the sale and marketing of air transportation and ancillary services in the territory of the other Contracting Party, either directly or through agents or other intermediaries appointed by the airline. The airline may sell, and any person shall be free to purchase, such transportation and ancillary services in local currency or in any freely convertible other currency.

## Annex 3

### ANNEX

#### **Route Schedule**

##### Korean Route

##### Notes:

(3) On route 1 no traffic may be picked up at an intermediate point and set down in the United Kingdom, or picked up in the United Kingdom to be set down at a point beyond, and vice versa, except as may from time to time be agreed between the aeronautical authorities of the Contracting Parties. These restrictions also apply to all forms of stop-over traffic.

**(UK Note in Reply)**

London, , 2014

Excellency,

I have the honor to refer to Your Excellency's Note dated \_\_\_\_\_, which reads as follows:

“..... (Korean Proposing Note) .....”

I have further the honor to inform Your Excellency that the above proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and there are no internal procedures of the Government of the United Kingdom of Great Britain and Northern Ireland required for the aforementioned amendment to the Agreement, and to confirm, on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, that Your Excellency's Note, together with its Annexes, and this Note in reply shall constitute an agreement between our two Governments in this matter, which shall enter into force on the date of this Note in reply, in accordance with Article 14 of the Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

\_\_\_\_\_  
Minister of State of Foreign  
& Commonwealth Affairs  
Of the United Kingdom of Great Britain  
and Northern Ireland

Ambassador Extraordinary and Plenipotentiary  
of the Republic of Korea  
to the United Kingdom of Great Britain  
and Northern Ireland”

**No.2**

*Minister of State for Foreign and Commonwealth Affairs to His Excellency Ambassador  
Extraordinary and Plenipotentiary of the Republic of Korea in London*

*4<sup>th</sup> February 2015*

Excellency,

I have the honor to refer to Your Excellency's Note dated 9<sup>th</sup> Dec 2014, which reads as follows:

[As in No.1]

I have further the honor to inform Your Excellency that the above proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and there are no internal procedures of the Government of the United Kingdom of Great Britain and Northern Ireland required for the aforementioned amendment to the Agreement, and to confirm, on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, that Your Excellency's Note, together with its Annexes, and this Note in reply shall constitute an agreement between our two Governments in this matter, which shall enter into force on the date of this Note in reply, in accordance with Article 14 of the Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

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