

Recommendation N° IFTSS/2016/009/UK on the notification by the United Kingdom about its intention to grant an approval derogating from certain provisions of Commission Regulation (EU) No 965/2012 on the basis of Article 14(6) of Regulation (EC) No 216/2008.

A) BACKGROUND

By letter dated 01 February 2016, the United Kingdom's representation to the EU in Brussels notified the Commission and EASA their intention to derogate from ORO.FTL.235(d) of Annex-III (Part-ORO) to Commission Regulation (EU) No 965¹, on the basis of Article 14(6) of Regulation (EC) No 216/2008².

In the attached notification letter, the United Kingdom explains its intention to approve an individual flight specification scheme for the United Kingdom AOC holder "DHL AIR LIMITED" (hereafter the operator) whilst conducting night-time cargo operations, derogating from the implementing rule requiring

that there shall never to be more than 168 hours between the end of one weekly rest period and the start of the next.

The operator currently operates under an almost identical derogation that was approved to the provisions of EU OPS Subpart Q under Commission Implementing Decision of B.10.2012.

The notification letter describes the operator's proposed measures as follows:

"The derogation is to the requirement for a weekly rest period of 36 hours including 2 local nights within 168 hours of the previous weekly rest within ORO.FTL.235.

The request is to extend this requirement to 192 hours for this specific Individual Flight Time Limitations Specific Scheme. This derogation will include a number of mitigations including a requirement for a rest period of at least 34 hours including one local night with the 192 hour period and a subsequent rest period that includes six local nights (five days off)."

The documents provided by UK CAA to support the proposed derogation specify the mitigations as follows:

"The DHL Air EASA Night Variation allows DHL Air Limited to apply 192 hours maximum time between two consecutive extended recovery rest periods, subject to all of the following conditions:

1. Two Days Off, including three local nights, immediately prior to each Duty block³ and five Days Off, including six local nights at the end of each Duty block, shall be achieved.
2. A Duty block shall have a maximum planned duration of 180 hours with a latest planned finish of 0400 hours on the ninth day at the home base.
3. The absolute maximum time between extended recovery rest periods of at least 36 hours including two local nights will be 192 hours.

¹ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council

² Regulation (EC) No 216/2008 of 20/02/2008 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European aviation Safety Agency and repealing Council Directive 91/670/EEC, regulation (EC) No 1592/2003 and Directive 2004/36/EC.

³ In the specific context of this operation 'duty block' means the time between two extended recovery rest periods.



4. Within a Duty Block, a rest period of 34 hours duration, including one local night shall be achieved.
5. The initial planned FDP within a Duty block shall have a maximum duration of 9 hours 15 minutes and shall be limited to two sectors. Subsequent FDP's within the Duty block shall be limited to four sectors.
6. Within a Duty Block, a maximum of four Flying Duty Periods which exceed 10.00hrs shall be planned.
7. A Duty period, which includes a Standby Duty followed by an FDP, may be extended by that Standby Duty period to a maximum Duty period of 13hrs 15mins.
8. Cumulative Duty in seven (7) Days, including positioning, is limited to 55 hours.
9. Cumulative Duty in twenty-eight (28) Days is limited to 120 hours.
10. Cumulative Flying Hours in twenty-eight (28) Days is limited to 80 hours.
11. Within a Duty Block, use of Commander's Discretion is limited to a maximum of two (2) hours.
12. The number of days off in 28 days from when this variation is used will be 8 but when variation trips are scheduled consecutively there will be a minimum of 10 Days Off.
13. Crews using this variation shall be exclusively on night time duties and shall not be assigned to mixed variations during a Duty block.

All other limitations of the DHL Air Flight Time Limitations scheme shall apply.

DHL Air shall continue to gather operational data to scientifically evaluate the effects of the variation on an ongoing basis."

The documents provided by UK CAA to support the proposed derogation highlight that the following conditions have been changed compared to the former derogation that was approved to the provisions of EU OPS Subpart Q under Commission Implementing Decision of 8.10.2012:

4. Within a Duty Block, a rest period of 34 hours duration, including one local night shall be achieved, ~~following no more than a maximum of four consecutive night duties.~~
5. The ~~Duty period~~ initial planned FDP within a Duty block shall have a maximum duration of 9 hours 15 minutes and shall be limited to two sectors. Subsequent ~~Duty periods~~ FDP's within the Duty block shall be limited to four sectors.
6. Within a Duty Block, a maximum of four Flying Duty Periods which exceed ~~9hrs 30mins~~ 10.00hrs shall be planned.

B) LEGAL FRAMEWORK

Article 14 (6) and (7) of the Basic Regulation state the following:

"6. Where an equivalent level of protection to that attained by the application of the rules implementing this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality, grant an approval derogating from those implementing rules. In such cases, the Member State concerned shall notify the Agency and the Commission that it intends to grant such an approval, and shall give reasons demonstrating the need to derogate from the rule concerned, as well as the conditions laid down to ensure that an equivalent level of protection is achieved.

7. Within two months of being notified in accordance with paragraph 6, the Agency shall issue a recommendation in accordance with Article 18(b) on whether an approval proposed in accordance with paragraph 6 fulfils the conditions laid down in that paragraph. The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to whether a proposed approval may be granted shall be adopted in



accordance with the regulatory procedure with scrutiny referred to in Article 65(6) within one month of receiving the Agency's recommendation. In such a case, the Commission shall notify its decision to all Member States, which shall also be entitled to apply that measure. The provisions of Article 15 shall apply to the measure in question."

The derogation refers to ORO.FTL.235 (d) of Annex-III (Part-ORO), which reads:

*"Recurrent extended recovery rest periods
Flight time specification schemes shall specify recurrent extended recovery rest periods to compensate for cumulative fatigue. The minimum recurrent extended recovery rest period shall be 36 hours, including 2 local nights, and in any case the time between the end of one recurrent extended recovery rest period and the start of the next extended recovery rest period shall not be more than 168 hours. The recurrent extended recovery rest period shall be increased to 2 local days twice every month."*

C) EVALUATION

The Agency reviewed the proposal with the help of a panel of experts⁴. The experts were provided in advance with the documents submitted by the United Kingdom's Civil Aviation Authority (hereafter UK CAA). The experts were invited to comment on the operator's proposal, the UK CAA's assessment of the operator's proposal and on the Agency's comments. Documents and comments were discussed during a WebEx meeting on 31 March 2016.

The following remarks result from the examination of the documents submitted by UK CAA to support the proposed derogation:

- The panel is satisfied with the reasons demonstrating the need to derogate. The proposed rostering system addresses appropriately the operational needs resulting from operating night-time cargo flights out of a company hub home base whilst respecting the preference of some crew members to choose their residence somewhere else. According to the documents provided by UK CAA, this derogation shall only be applicable to volunteer crew members based in Leipzig (LEJ) and East Midlands (EMA).
- The panel supported the operator's initiative to improve their policy on commuting⁵ to explicitly establish acceptable commuting behaviour before the first flight duty period (FDP) in a duty block. The panel recommended that UK CAA should include the assessment of the performance of the amended commuting policy in their oversight activities.
- The panel noted that the change to condition number 4. of the current derogation (within a Duty Block, a rest period of 34 hours duration, including one local night shall be achieved), is estimated in the scientific assessment that accompanies the proposal to not negatively affect alertness if the 34-hour rest period takes place after five consecutive nights instead of four. The panel suggested requiring data collection on the effectiveness of the 34-hour break during the working block.
- The panel accepted that the robustness of the operator's rostering system was an effective mitigating measure to control the cumulative effects of consecutive night duties. Nonetheless, panel members were of the opinion that operating a fifth night before the 34-hour break could potentially increase cumulative fatigue. Therefore, the panel recommended that roster robustness should be monitored through performance indicators. The panel found that a defined level of robustness should be a condition to operate under the proposed derogation.

⁴ Panel composition IFTSS 2016/009/UK shared with Advisory Bodies on Circabc.

⁵ 'Commuting' means that a crew member would need usually more than 90 minutes to travel from their residence to their home base.



- Panel members pointed out that changing the limitation on the duration of the duty periods in conditions 5. and 6. to be a limitation on the duration of the FDP, would potentially permit for e.g. long positioning flights after an FDP. Such long duties (FDP combined with positioning) could have a high impact on the ability to achieve optimal rest before the next FDP. On the other hand, the panel acknowledged that the purpose of the proposed derogation was to enable a very stable roster pattern without planned long positioning flights after the FDP. Therefore, positioning crew members after the FDP should be exceptional under this pattern. The panel suggested recommending a condition to monitor post FDP positioning for crew members rostered in accordance with this derogation.
- The panel acknowledged that the operator has demonstrated compliance with ORO.FTL.120 (fatigue risk management) . The panel agreed that the operator should apply its demonstrated capability to collect and assess fatigue data to gather objective information on fatigue from a representative sample of its crew members to demonstrate the continued effectiveness of the proposed mitigating measures.
- The panel discussed the importance of the operational context⁶ to select appropriate fatigue mitigations. The panel highlighted that their assessment of the effectiveness of the specific fatigue mitigating measures proposed by the operator was only valid for this specific operation with its unique operational context. Therefore, the panel emphasised that the operator's unique operational context should be considered as contributing condition to an appropriate fatigue management in this operation.
- One panel member reminded that the current conditions had been accepted with a CAP 371⁷ background with, amongst other differences, different provisions on commander's discretion. Therefore, the panel highlighted that condition 11. should be adapted to reflect the Subpart-FTL commander's discretion provisions. The panel suggested rewording condition 11. to include a reference to 12 hrs FDP including commander's discretion.
- The Agency noted that, in the specific context of this derogation, a 'duty block' is equivalent to a 'rotation' as defined in ORO.FTL.105 (22). ORO.FTL.105 does not define 'duty block'. For legal certainty 'duty block' shall be replaced by 'rotation' in the mitigating conditions.

D) CONCLUSION

Having reviewed the derogation notified by the United Kingdom, the Agency sees no reason to consider that the proposed measures do not lead to an equivalent level of protection to that attained by the application of the rules implementing the Basic Regulation, provided the following conditions are fulfilled:

- For rosters in accordance with the "DHL Air EASA Night Variation", the time between the end of one recurrent extended recovery rest period and the start of the next extended recovery rest period shall not be more than 192 hours, provided:
 1. The extended recovery rest period immediately prior to each rotation includes 3 local nights and the extended recovery rest period immediately after the rotation includes 6 local nights.
 2. A rotation has a maximum planned duration of 180 hours with a latest planned finish at 04:00 local time on the ninth day at the home base.
 3. Within a rotation, a rest period of 34 hours duration, including 1 local night shall be achieved, following no more than a maximum of five consecutive night duties.

⁶ Elements of the operational context are e.g. fleet, the home base, night-time sole cargo operation, company hubs, and demographic structure of the crew considering elements such as age, competence, experience in night flights, and country of residence.

⁷ [UK CAA publication CAP 371 The Avoidance of Ai Crew Fatigue](#)



4. The planned FDP on the first day of a rotation shall have a maximum duration of 9 hours 15 minutes and shall be limited to two sectors. Subsequent FDPs within the rotation shall be limited to four sectors.
 5. A maximum of four FDPs which exceed 10.00hrs shall be planned within a rotation.
 6. A duty period, which includes a Standby Duty followed by an FDP, may be extended by that standby duty period to a maximum duty period of 13hrs 15mins.
 7. Cumulative duty in seven (7) days, including positioning, is limited to 55 hours.
 8. Cumulative duty in twenty-eight (28) days is limited to 120 hours.
 9. Cumulative Flying Hours in twenty-eight (28) days are limited to 80 hours.
 10. The maximum FDP with commander's discretion is 12 hours.
 11. The number of days off in 28 days from when this variation is used will be 8 but when variation trips are scheduled consecutively there will be a minimum of 10 Days Off.
 12. Crew members rostered in accordance with this variation shall be exclusively on night time duties and shall not be assigned to duties not rostered in accordance with this variation during a rotation.
- The DHL Air EASA Night Variation shall only be applicable to crew members based at Leipzig (LEJ) airport or East Midlands (EMA) airport.
 - The UK CAA shall ensure that the effectiveness of the proposed mitigating measures is continuously monitored by the operator's Fatigue Risk Management (FRM) in accordance with ORO.FTL.120.
 - The UK CAA shall monitor the effectiveness of the operator's commuting⁸ policy which is part of the operator's FRM and includes the following conditions:
 - If crew members use a DHL flight to commute on day one of a DHL Air EASA Night Variation rotation, the maximum 09:15 FDP shall start 90 minutes after the scheduled reporting time for the commuting flight.
 - If the chosen commuting flight and the planned flights as an operating crew member do not fit into the maximum 09:15h FDP for day one, the crew member shall take their minimum rest period prior to the first FDP at the home base airport location.
 - The UK CAA shall monitor performance indicators on roster robustness. Performance thresholds and changes thereto shall be approved by UK CAA.
 - The UK CAA shall ensure that the effectiveness of the 34-hour break during a long block roster is revalidated by scientific research. Any future research shall be carried out with a view of ensuring that crew member samples shall be representative of the crew population exposed to the DHL Air EASA Night Variation. The operator shall take the appropriate steps to encourage as many crew members as possible to volunteer for objective and subjective fatigue and performance data collection. The operator shall include flight data monitoring (FDM) event trend monitoring as a trigger for further investigation in its reactive FRM processes.
 - The UK CAA shall ensure that operator provides evidence that long duty periods on day one do not lead to an increase of fatigue on the following days.

Signed on *Glogne, May 03, 2016*

Ricardo GÉNOVA GALVÁN
Flight Standards Director

⁸ For the purpose of this DHL Air EASA Night Variation, 'commuting' means that a crew member needs usually more than 90 minutes to travel from their residence to their home base.

