



Treaty Series No. 5 (1983)

Agreement ✓

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of New Zealand
concerning Air Services

London, 4 October 1982

[The Agreement entered into force on 4 October 1982]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1983*

LONDON

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF NEW ZEALAND CONCERNING
AIR SERVICES**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944⁽¹⁾;

Desiring to conclude an Agreement supplementary to the said Convention for the purpose of establishing air services between their respective territories;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement, unless the context otherwise requires:

- (a) the term "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944, and includes:
 - (i) any amendment thereto which has entered into force under Article 94(a) thereof and has been ratified by both Contracting Parties⁽²⁾; and
 - (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or Annex is at any given time effective for both Contracting Parties⁽²⁾;
- (b) the term "aeronautical authorities" means in the case of the United Kingdom, the Secretary of State for Trade, and in the case of New Zealand, the Minister responsible for Civil Aviation or, in both cases, any person or body authorised to perform any functions at present exercisable by the abovementioned authorities or similar functions;
- (c) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (d) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;

⁽¹⁾ Treaty Series No. 8 (1953), Cmd. 8742.

⁽²⁾ Treaty Series No. 24 (1958), Cmnd. 482, Treaty Series No. 63 (1961), Cmnd. 1448, Treaty Series No. 59 (1962), Cmnd. 1826, Treaty Series No. 62 (1973), Cmnd. 5310, Treaty Series No. 98 (1975), Cmnd. 6117, Treaty Series No. 27 (1976), Cmnd. 6447 and Treaty Series No. 57 (1980), Cmnd. 7960.

- (e) the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (f) the term "this Agreement" includes the Annex hereto and any amendments to it or to the Agreement;
- (g) the term "user charge" means a charge made to airlines for the provision for aircraft, their crews and passengers of airport or air navigation property or facilities, including related service and facilities.

ARTICLE 2

Applicability of Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air services.

ARTICLE 3

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the airlines designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

(4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routeing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

ARTICLE 4

Designation of and Authorisation of Airlines

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations.

(2) On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

(4) Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(5) 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) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3(2) of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Principles Governing Operation of Agreed Services

(1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision at a reasonable load factor of capacity adequate for the current and reasonably anticipated requirements of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

(4) The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing paragraphs of this Article for the operation of the agreed services by the designated airlines.

ARTICLE 7

Tariffs

(1) The term "tariff" means:

- (a) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
- (b) the freight rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
- (c) the conditions governing the availability or applicability of any such fare, freight rate or price, including any benefits attaching to it; and
- (d) the rate of remuneration paid by an airline to an intermediary in respect of tickets sold or air waybills completed by that intermediary for carriage on scheduled air services.

(2) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, the interests of users, reasonable profit, characteristics of the service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the provisions of this Article.

(3) Agreement on the tariffs shall be reached wherever possible by the designated airlines concerned using where appropriate the tariff-fixing machinery of the IATA. However, a designated airline shall not be precluded from filing any proposed tariff, nor the aeronautical authorities from approving it, if that airline has failed to obtain the agreement of any other designated airline. In all cases the tariffs on any agreed service shall be those approved by the aeronautical authorities of both Contracting Parties.

(4) Any tariffs for an agreed service shall be filed with the aeronautical authorities of both Contracting Parties at least 60 days prior to the proposed effective date unless the aeronautical authorities of both Contracting Parties permit the filing to be made on shorter notice. Such tariffs shall become effective unless the existing tariffs continue in force as provided in paragraph (6) of this Article. Any proposed tariff for carriage between the territories of the Contracting Parties shall be filed by the designated airline seeking approval for it with the aeronautical authorities of both Contracting Parties in such form as the aeronautical authorities of each Contracting Party may require in order to disclose the particulars referred to in paragraph (1) of this Article.

(5) If the aeronautical authorities of one Contracting Party, on receipt of any filing referred to in paragraph (4) of this Article, are dissatisfied with the tariff proposed the first Contracting Party shall so notify the aeronautical authorities of the other Contracting Party within 30 days of the filing of such tariff, but in no event less than 15 days prior to the proposed effective date of such tariff. The Contracting Party receiving the notification may request consultations and, if so requested, such consultations shall be held at the earliest possible date for the purpose of attempting to reach agreement on the appropriate tariff. If notification of dissatisfaction is not given as provided in this paragraph, the tariff shall be deemed to be approved by the aeronautical authorities of the Contracting Party receiving the filing and shall become effective on the proposed date.

(6) If an agreement under paragraph (5) of this Article is not reached prior to the proposed effective date of the tariff, or if consultations are not requested, the existing tariff shall continue in force beyond the date on which it would otherwise have expired. However, an existing tariff shall not be prolonged under this provision more than 12 months after the date on which one Contracting Party gave notice of dissatisfaction to the other Contracting Party under paragraph (5) of this Article or more than 12 months after the date of expiry of the tariff whichever is the later. In no circumstances however shall a Contracting Party require a different tariff from the tariff of its own designated airlines for comparable services between the same points.

(7) The tariffs charged by the designated airlines of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a third State shall be subject to the approval of the other Contracting Party and such third State: provided, however, that a Contracting Party shall not require a different tariff from the tariff of its own airlines for comparable service between the same points. The designated airlines of each Contracting Party shall file such tariffs with the other Contracting Party, in accordance with its requirements. Approval of such tariffs may be withdrawn on not less than 15 days' notice provided however that a Contracting Party withdrawing such approval shall permit the designated airline concerned to apply the same tariffs as its own airlines for comparable services between the same points.

(8) No new or amended tariff shall come into effect unless it is approved by the aeronautical authorities of both Contracting Parties or is determined under Article 15 of this Agreement.

ARTICLE 8

Customs Duties

(1) Aircraft operated in international air services by the designated airlines of either Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco), which are on board such aircraft, shall be relieved on the basis of reciprocity from all customs duties, national excise taxes, and similar national fees and charges not based on the cost of services provided, on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be relieved from the duties, taxes, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided:

- (a) aircraft stores introduced into or supplied in the territory of a Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;
- (b) spare parts including engines introduced into the territory of a Contracting Party for the maintenance or repair of aircraft used in an international air service of a designated airline of the other Contracting Party; and
- (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in an international air service of a designated airline of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The reliefs provided for by this Article shall also be available in situations where the designated airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs (1) and (2) of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

ARTICLE 9

Aviation Security

The Contracting Parties agree to provide maximum aid to each other with a view to suppressing unlawful seizure of aircraft and other unlawful acts against aircraft, airports and air navigation facilities and threats to aviation security. They reaffirm their commitments under the provisions of the Convention on offences and certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963⁽³⁾, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970⁽⁴⁾, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971⁽⁵⁾. The Contracting Parties shall also have regard to applicable aviation provisions established by the International Civil Aviation Organisation. When incidents or threats of unlawful seizure of aircraft or other unlawful acts against aircraft, airports or air navigation facilities occur, the Contracting Parties shall expedite and facilitate all communications intended to terminate such incidents rapidly and safely.

ARTICLE 10

Provision of Statistics

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

ARTICLE 11

Transfer of Earnings

Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be effected in accordance with the laws and regulations of the Contracting Party concerned, uniformly and reasonably applied, at the rate of exchange applicable to current transactions which is

⁽³⁾ Treaty Series No. 126 (1969), Cmnd. 4230.

⁽⁴⁾ Treaty Series No. 39 (1972), Cmnd. 4956.

⁽⁵⁾ Treaty Series No. 10 (1974), Cmnd. 5524.

in effect at the time such revenues are presented for conversion and remittance. The transfer of funds shall not be subject to any charges except those normally collected by banks for such operations and related to the cost of such operations.

ARTICLE 12

Airline Representation

The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.

ARTICLE 13

User Charges

(1) Neither Contracting Party shall impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own designated airlines operating similar international air services.

(2) Each Contracting Party shall encourage consultation between its competent charging authorities and airlines using the services and facilities, where practicable through the airlines' representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made. Each Contracting Party shall further encourage the competent charging authorities and the airlines to exchange appropriate information concerning user charges.

ARTICLE 14

Consultation

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of sixty (60) days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

ARTICLE 15

Settlement of Disputes

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a third State, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within 60 days of the appointment of the second;

(b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment within 30 days. If the President is of the same nationality as one of the Contracting Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 30 days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Contracting Party or at its discretion within 30 days after replies are due.

(5) The tribunal shall attempt to give a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision shall be taken by a majority vote.

(6) The Contracting Parties may submit requests for clarification of the decision within 15 days after it is received and such clarification shall be issued within 15 days of such request.

(7) The decision of the tribunal shall be binding on the Contracting Parties.

(8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President of the International Court of Justice in implementing the procedures of paragraph (2)(b) of this Article.

ARTICLE 16

Amendment

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an Exchange of Notes.

ARTICLE 17

Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 18

Registration with ICAO

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organisation.

ARTICLE 19

Entry into Force

This Agreement shall enter into force on the date of signature.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 4th day of October 1982.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

COCKFIELD

For the Government of New Zealand:

GEORGE F. GAIR

ANNEX
ROUTE SCHEDULE

Section 1

Routes to be operated by the designated airline or airlines of the United Kingdom.

Route I

Points in the United Kingdom – Intermediate Points excluding Hong Kong – Points in New Zealand.

Route II

Hong Kong – Intermediate Points – Points in New Zealand.

Notes :

1. Intermediate points may be omitted on any flight provided that the service begins or ends in United Kingdom territory.

2. On Route II no traffic may be picked up at an intermediate point and set down at points in New Zealand and *vice versa*, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties.

Section 2

Routes to be operated by the designated airline or airlines of New Zealand.

Route I

Points in New Zealand – Intermediate Points excluding Hong Kong – Points in the United Kingdom.

Route II

Points in New Zealand – Intermediate Points – Hong Kong.

Notes :

1. Intermediate points may be omitted on any flight provided that the service begins or ends in New Zealand.

2. On Route II, no traffic may be picked up at an intermediate point and set down at points in Hong Kong and *vice versa*, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties.