

Detention of Aircraft

Airside Operational Instruction 25

AOI Owner - Airfield Operations



1. Regulations

- 1.1 Under S.88 of the Civil Aviation Act 1982 East Midlands International Airport Limited (the “**Airport Company**”) has the right to detain any aircraft for non-payment of airport charges until such time as the charges due in respect of it (or incurred by its operator in respect of another aircraft) are paid. Such detention is initiated by placing a lien on the aircraft.
- 1.2 The power to detain is specific to charges incurred at EMA.
- 1.3 The Airport Company may not detain an aircraft for airport charges incurred at other airports within the Manchester Airport Group. Similarly, other airports within the Manchester Airport Group may not detain for airport charges incurred at this airport.
- 1.4 Unlike the powers to detain described in paragraphs 9 and 10 below, the power to detain to recover unpaid airport charges is not given to specific named individuals. It is given to the Airport Company as the owner/manager of the airport.
- 1.5 The procedures set out below determine who is authorised internally to authorise the placing of a lien.

2. Aircraft to be detained

- 2.1 Aircraft that may be detained until such time as any charges are discharged are:
- a. The aircraft in respect of which the charges were incurred (whether or not the charges were incurred by the person/company who is the operator of the aircraft at the time the detention begins); or
 - b. Any other aircraft of which the person/company in default is the operator at the time the detention begins.
- 2.2 The power to lien is to recover “airport charges”. This will include landing, navigational and parking charges. It may also include other “services” provided by the Airport Company to the aircraft. Group Legal Services should be consulted prior to placing a lien in respect of other “services” to ensure the power to lien exists.
- 2.3 The power to lien only arises where “default” is made in payment of airport charges. If credit terms are in place e.g. payment within 28 days of date of invoice, “default” will not arise in respect of such sums until the expiry of this period.
- 2.4 In the event that the aircraft charges are not paid within 56 days of the date when detention begins, the Airport Company may make an application to Court for an Order to sell the aircraft in order to satisfy the charges.

3. Internal Authorisation

- 3.1 When a debt that may be recouped by placing a lien on an aircraft is identified by the finance department or is flagged by the appropriate financial system, the Head of Finance should, in the first instance, consult with the Commercial Director to ascertain the commercial desire and operational and commercial implications of detaining an aircraft. Group Legal Services should be consulted prior to implementing the lien except where there is insufficient time to do so due to the urgency of the situation. Following this internal consultation, details of the lien should be entered in Part A of the form '*Notification Of Intention To Detain An Aircraft*' (attached at Appendix 1), and the Commercial Director should then authorise implementation of the lien by signing Part A of the form.
- 3.2 Once authorisation for the implementation of a lien is granted, copies of the completed form are to be circulated to:
- (i) Managing Director;
 - (ii) Head of Finance;
 - (iii) Group Legal Services;
 - (iv) Operations Director;
 - (v) Air Traffic Services Manager;
 - (vi) Head of Fire and Airfield Ops; and
 - (vii) Group Insurance.
- 3.3 If the aircraft is foreign registered, the Department for Transport (DfT) must be informed (on 0207 944 5847) before the lien is implemented.

4 Implementation

- 4.1 On receipt of the Notification of Intention to Detain an Aircraft a person designated to detain aircraft shall complete and sign the detention notice (Appendix 2).
- 4.2 It is important that a contact name and number are specified on the detention notice so that payment can be made and the lien removed without delay. Out of hours contact details should be provided where possible.
- 4.3 The persons designated to detain aircraft are:
- a. Operations Director
 - b. Head of Fire & Airfield Operations
 - c. Fire Services Manager
 - d. (Fire) Station Manager
- 4.4 The person designated to detain aircraft shall attend the aircraft and serve the detention notice, in the presence of witnesses, by affixing it to the exterior of the aircraft and if possible also presenting it to the aircraft Captain. A copy of the notice is to be affixed to the exterior of the aircraft door (in a waterproof casing) in all cases (whether or not handed to the Captain as well) so that any person entering is aware of detention. A copy should be sent immediately to the owners' and operators' head office. A photograph should be taken of the

lien in place and the precise time that the lien is placed should be accurately recorded on the lien itself and also in any log-book and/or via any photograph.

- 4.5 A step-by-step checklist to detaining aircraft is set out at Appendix 4. This should be consulted and followed when detaining aircraft.

5 Exceptions

- 5.1 The legislation states that the Airport Company shall not detain or continue to detain an aircraft for unpaid charges if the operator of the aircraft or any other person claiming an interest in the aircraft:

- i. disputes that the charges, or any part of them are due; or
- ii. disputes that the charges, or any part of them, were incurred in respect of that aircraft (if detained as above) providing that the Airport Company is given, pending determination of the dispute, sufficient security for payment of the charges which are alleged to be due.

6 Removal of Lien

- 6.1 On final settlement of the charges that resulted in the lien being implemented the Managing Director, Operations Director (or whoever authorised implementation of the lien) should then rescind the lien by signing Part B of the form 'Notification of Intention to Detain an Aircraft' (attached Appendix 1). Once authorisation for the removal of a lien is granted, copies of the completed form are to be circulated.

7 Legal Liability

- 7.1 The Airport Company's legal liability for detention of aircraft is insured under the Group Airport Operators Policy for up to £1m per incident or series of incidents arising out of the same cause. Therefore, if the airport charges are owed to the Airport Company because of the aircraft's operation from the airport the Airport Company can detain and in the event that the detention was wrongful then the Airport Company's liability would be covered. This might not be the case with CAA and Eurocontrol detentions. It is therefore important to inform Group Insurance of the detention in accordance with paragraph 3.2(vii) above so that they can liaise with the MAG Insurance Brokers as appropriate.

8 Effect of administration/insolvency of airline operator

- 8.1 Acting quickly to detain aircraft can be very important in order to put the Airport Company in a position to recover as much of the outstanding airport charges as possible, this is particularly so in circumstances where an airline is or may be entering administration or insolvency.
- 8.2 If an airline operator is already in administration or insolvency at the time when the aircraft is detained, this can act to render any lien or detention ineffective and potentially unlawful. In such circumstances it may therefore be necessary to make an urgent application to the Court or administrator and Group Legal should be engaged to advise on this.

- 8.3 In an administration or insolvency situation, the lease of any aircraft which have been leased to the airline operator by a third-party lessor shall likely be terminated by the lessor. The precise timing of the: (i) aircraft detention by the Airport Company; (ii) aircraft lease termination by the lessor; and (iii) administration or insolvency of the airline operator, can be crucial in determining whether the Airport Company is in a position to recover the entire fleet debt owed to it by the airline operator or whether it can only recover the outstanding charges associated with the specific aircraft it has detained.
- 8.4 In summary, detention by the Airport Company ideally should occur prior to points (ii) and (iii) in paragraph 8.3 above in order to provide the Airport Company with the best chance of recovering the entire fleet debt. As a result, it is particularly important to move quickly and efficiently in detaining aircraft where there is the possibility of an administration or insolvency event.

9 CAA and Eurocontrol Detentions

- 9.1 The following persons are authorised to detain aircraft on behalf of the Civil Aviation Authority (CAA) and Eurocontrol in respect of air navigation charges due. The powers to detain aircraft are dealt with in separate legislation.
- a. Operations Director
 - b. Head of Fire & Airfield Operations
 - c. Air Traffic Services Manager
 - d. Fire Station Managers

All required paperwork will be prepared and provided by the CAA.

- 9.2 The CAA have given the Airport Company and those specific individuals authorised to place liens on aircraft on the CAA's behalf a written indemnity for any loss or liability arising from acting on behalf of the CAA, except where such loss or liability arises from the negligence of the Airport or the authorised individuals.
- 9.3 Implementation of CAA and Eurocontrol liens
- a. The Airport will receive a request to detain an aircraft from the CAA on behalf of either Eurocontrol or the National Air Traffic Services (NATS).
 - b. This request must be actioned by one of the persons named in paragraph 9.1 and in the manner as described in paragraph 4.
 - c. Once the aircraft has been detained the CAA should be contacted, they will, in turn inform the operator of the event and the procedures for payment of costs.
 - d. Once a satisfactory conclusion has been reached between the Operator and the CAA, the Airport will be informed and the aircraft can be released. This should be confirmed to the CAA, who will in turn advise the Operator.

10 Air Navigation Order Detentions

- 10.1 A further right to detain aircraft may be given to specific individuals by CAA authorisation issued under the Air Navigation Order 2016 made pursuant to Section 60 of the Civil Aviation Act 1982. This legislation relates to navigational and safety issues, as well as possible detention as detailed in paragraph 10.3.
- 10.2 The following persons are authorised by the Civil Aviation Authority to detain an aircraft on safety grounds:
- a. Operations Director
 - b. Head of Fire and Airfield Operations
 - c. Operations Development & Safety Manager
 - d. Fire Service Manager
 - e. Fire Station Manager
- 10.3 Should the above become aware of an aircraft that gives cause for concern for their safe operations, then they may consider the following options:
- (i) There is no apparent safety risk, in which case no further action is taken by the Airport.
 - (ii) They are satisfied that there is a safety risk and are in a position to detain the aircraft pursuant to ANO Article 257(1), see paragraph 10.4.
 - (iii) They believe that there may be a safety risk but need further advice from a CAA Surveyor in determining an appropriate course of action – see paragraph 10.8.
- 10.4 Should the above authorised person resolve that there is a safety risk, in the first instance they should try to contact the CAA to request that they attend and detain the aircraft. If this is not possible then authorised persons are entitled to perform any of the following functions at EMA:
- (i) To request the production of documents and records required by the Air Navigation Order or any Regulations made there under to be produced at the request of an Authorised person and to inspect and copy the same.
 - (ii) To request the production of a noise certificate in force in respect of an aircraft.
 - (iii) In accordance with the provision of an Air Navigation Order, to enter upon and inspect any aircraft, to direct the operator or commander of an aircraft not to permit it to make a flight and to detain the aircraft.
 - (iv) In accordance with the provisions of an Air Navigation (Noise Certification) Order, to enter upon and inspect any aircraft, to direct the operator or commander of an aircraft not to permit it to make a flight and detain the aircraft.

- 10.5 If a decision is made to detain an aircraft on safety grounds, then one of the above persons authorised to detain aircraft shall complete and sign the detention notice (see Appendix 3).
- 10.6 Once an aircraft has been detained then the CAA should be informed on the following numbers:
- (i) Between the hours of 0900 hours and 1700 hours the CAA Investigation and Enforcement Manager should be contacted on 0207 453 6193.
 - (i) Should the above be unavailable, or if it is out of hours, then contact 01293 567171.
- 10.7 Should an aircraft be detained by the Airport and a CAA Surveyor subsequently reviews the position and considers that there are no grounds for detention, then the direction notice will be revoked (see Appendix 3 below).
- 10.8 One of the above authorised persons may believe that there is a safety risk but need further advice from the CAA before the aircraft is detained. In this case the persons listed in paragraph 10.6 should be contacted and a Surveyor will be requested. The Surveyor will review the position and will either issue a detention notice or will advise the Airport that no further action is to be taken.
- 10.9 Once it has been agreed that an aircraft is now safe to operate, the CAA will revoke the direction to prevent aircraft flying (see Appendix 3 below). The CAA will inform both the Airport and the Operator that this has happened, and normal operations may commence.

APPENDIX 1 – NOTIFICATION OF INTENTION TO DETAIN AN AIRCRAFT**NOTIFICATION OF INTENTION TO DETAIN AN AIRCRAFT***for internal use only – this is not a lien*

Part A To be completed and distributed to the relevant persons (as listed in paragraph 3.2) before a lien is placed on any aircraft at East Midlands Airport.

Part B To be completed and re-distributed as above, as soon as practicable once a lien has been rescinded.

PART A

East Midlands International Airport Limited intend to place a lien on the following aircraft.

Aircraft details	
Registration	
Type	
Operating Company	
Owner (if known)	
Details of Debt To Be Recovered	

Air Traffic please suspend departure slots for this aircraft.

Airfield Operations please ensure that the aircraft is parked in an area that will cause the minimum amount of disruption to operations.

Authorising person:

Signature:

Print Name:

Position:

Date: Time:

PART B

The lien relating to the above aircraft has now been rescinded.

Authorising person:

Signature:

Print Name:

Position:

Date: Time:

APPENDIX 2 – NOTICE OF DETENTION OF AIRCRAFT

EAST MIDLANDS INTERNATIONAL AIRPORT LIMITED

NOTICE OF DETENTION OF AIRCRAFT

Section 88, Civil Aviation Act 1982
Aerodromes (Designation) (Detention and Sale of Aircraft) order 2009

AIRCRAFT REGISTRATION

[INSERT AIRCRAFT REGISTRATION]

NOTICE IS HEARBY GIVEN

for and on behalf of East Midlands International Airport Limited, trading as East Midlands Airport ("**East Midlands Airport**") that the above aircraft is detained by East Midlands Airport pursuant to Section 88(1)(a) of the Civil Aviation Act 1982 (the "**Act**"), in respect of the default in payment of the airport charges specified in the schedule to this notice which are owed to East Midlands Airport by:

[INSERT NAME OF DEBTOR]

and shall be detained at East Midlands Airport until all such outstanding airport charges have been irrevocably paid in full. Pending such payment, this aircraft may not be removed, boarded or its state or condition altered in any way. In accordance with Section 88(7) and (8) of the Act, this detention extends to any and all equipment, stores and aircraft documentation carried in the aircraft.

If the outstanding airport charges are not paid within 56 days of the date of this notice, East Midlands Airport may seek the leave of the court to sell the aircraft in exercise of its statutory power under Section 88(1)(b) and (3) of the Act.

Signed.....

Time.....

For and behalf of East Midlands Airport

Date.....

To discuss the requirements for the removal of the lien contact **[name & position]** or phone **[number]**

APPENDIX 3 – AIR NAVIGATION ORDER 2016 DETENTION FORMS

Air Navigation Order 2016

DIRECTION TO PREVENT AIRCRAFT FLYING WHILE IN A CONDITION UNFIT FOR THE FLIGHT

To: **NAME OF OPERATOR**, the Operator of **AIRCRAFT REGISTRATION**
or
NAME OF COMMANDER, the Commander of **AIRCRAFT REGISTRATION**

WHEREAS it appears to me **NAME OF AUTHORISED PERSON**

being an Authorised Person for the purposes of Article 257 of the Air Navigation Order 2016, that the aircraft bearing the registration **AIRCRAFT REGISTRATION** is likely to be flown while in a condition unfit for the flight.

NOW I, as an Authorised Person, hereby direct that the said aircraft shall not be flown until this direction has been revoked by the CAA or by an Authorised Person.

Dated this day of [year]

Signature

ACKNOWLEDGEMENT OF SERVICE

I acknowledge that I have received a copy of the Direction set out below.

Signature

Name of Operator or Commander

Date.....

Time

APPENDIX 4 – Example Revocation of Direction

Air Navigation Order 2016

REVOCATION OF DIRECTION TO PREVENT AIRCRAFT FLYING WHILE IN A CONDITION UNFIT FOR THE FLIGHT

I, **NAME OF AUTHORISED PERSON**, being an Authorised Person for the purposes of Article 257 of the Air Navigation Order 2016, revoke the Direction dated **DATE** issued to **NAME OF OPERATOR or NAME OF COMMANDER** in respect of **AIRCRAFT REGISTRATION**.

Dated this day of [year]

Signature

APPENDIX 5 – CHECKLIST OF ACTIONS - INTERNAL

Classification of detention:

- A. Lien to be enforced for non-payment of Airport Charges; and/or
- B. Direction to detain Aircraft due to being deemed as unfit for flight (ANO Article 257); and/or
- C. Lien to be enforced of behalf of CAA for non-payment of Euro Control charges.

Actions:

A. Lien to be enforced for non-payment of Airport Charges:

1. **Appendix 1 Part A**, to be completed by Operations Director or Head of Fire and Airfield Operations
2. Copies of Part A to be sent to:
 - (i) Managing Director;
 - (ii) Head of Finance;
 - (iii) Group Legal Services;
 - (iv) Operations Director;
 - (v) Air Traffic Services Manager;
 - (vi) Group Insurance.
3. If the aircraft is foreign registered, the Department for Transport (DfT) must be informed (Roger Kinsey on 0207 944 5847) before the lien is implemented.
4. Copy of **Appendix 1 Part A** also submitted to NATS to request that they suspend departure slots for aircraft in question.
5. **Appendix 2** to be completed by Operations Director or Head of Fire and Airfield Operations and affixed to the aircraft L1 door exterior, in a waterproof case. Copy given to Captain of aircraft if possible. Accurate time of placing lien to be recorded and evidenced by photograph.
6. Physical barriers should be placed around the aircraft following prior authorisation from the signatory as soon as possible. For example, this may be actual temporary barriers around outside of aircraft or may include safely parking an airside ops vehicle safely behind the aircraft to prevent departure. Photos and evidence of this physical detention to be recorded.
7. A copy of the completed **Appendix 2** to be sent to the Airline Operator.

Removal of Lien:

1. Upon confirmation of payment of airport charges and release of Lien by the signatory of Part **Appendix 1 Part A**, **Part B** shall be completed by the Operations Director or Head of Airside Operations.
2. **Part B** to be circulated to the roles listed in step 2.
3. All affixed notification and/or physical barriers to be removed from the Aircraft.

B. Direction to detain Aircraft due to being deemed as unfit for flight (ANO Article 257)

1. **Appendix 1 Part A**, to be completed by Operations Director or Head of Fire and Airfield Operations
2. Copies of Part A to be sent to:
 - (i) Managing Director;
 - (ii) Financial Director;
 - (iii) Group Legal Services;
 - (iv) Operations Director;
 - (v) Air Traffic Services Manager;
 - (vi) Airfield Duty Manager;
 - (vii) Group Insurance.
3. If the aircraft is foreign registered, the Department for Transport (DfT) must be informed (Roger Kinsey on 0207 944 5847) before the lien is implemented.
4. **Appendix 3** to be completed by Operations Director or Head of Airside Operations and affixed to the aircraft L1 door exterior, in a waterproof case.
5. Physical barriers should be placed around the aircraft following prior authorisation from the signatory. For example, this may be actual temporary barriers around outside of aircraft or may include safely parking an airside ops vehicle safely behind the aircraft to prevent departure. Photos and evidence of this physical detention to be recorded.
6. A copy of the completed **ACKNOWLEDGEMENT OF SERVICE** form, to be sent to the Airline Operator.

Removal of Direction:

1. Following confirmation that the aircraft subject to the direction is fit to fly, the **REVOCATION OF DIRECTION TO PREVENT AIRCRAFT FLYING WHILE IN A CONDITION UNFIT FOR THE FLIGHT** form must be completed by the Operations Director or Head of Airside Operations.
2. **Appendix 1 Part B**, shall be completed by the Operations Director or Head of Fire and Airfield Operations and circulated to the roles listed in step 2.
3. All affixed notification and/or physical barriers to be removed from the Aircraft.

C. Lien to be enforced of behalf of CAA for non-payment of Euro Control charges**NOTE:**

All direction for detention of an aircraft for non-payment of Euro Control fees will be given by a CAA nominated person.

With the exception of Appendix 1, documentation will be provided by the CAA with instructions

1. **Appendix 1 Part A**, to be completed by Operations Director or Head of Fire and Airfield Operations.
2. Copies of Part A to be sent to:
 - (i) Managing Director;
 - (ii) Financial Director;
 - (iii) Group Legal Services;
 - (iv) Operations Director;
 - (v) Air Traffic Services Manager;
 - (vi) Group Insurance.
3. If the aircraft is foreign registered, the Department for Transport (DfT) must be informed (Roger Kinsey on 0207 944 5847) before the lien is implemented.

Note: Lien Documentation and further instructions to be provided by the CAA.

Removal of Lien:

1. Upon confirmation of payment of airport charges in writing from the CAA and release of Lien by the signatory of Part **Appendix 1 Part A**, Part B shall be completed by the Operations Director or Head of Fire and Airfield Operations.
2. **Part B** to be circulated to the roles listed in step 2.
3. All affixed notification and/or physical barriers to be removed from the Aircraft.