



SUPPLEMENT

TO THE

NEW ZEALAND GAZETTE

OF

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**The Civil Aviation (Cargo Agents' Commission
Regime) Notice 1983**

**The Civil Aviation (Passenger Agents'
Commission Regime) Notice 1983**

*The Civil Aviation (Cargo Agents' Commission Regime) Notice
1983*

PURSUANT to section 29A (6) of the Civil Aviation Act 1964, the Minister of Civil Aviation and Meteorological Services hereby gives the following notice.

ANALYSIS

- | | |
|--|--|
| 1. Title and commencement | 9. No commission payable in certain circumstances |
| 2. Interpretation | 10. Payments pursuant to interline agreements |
| 3. Application | 11. Beneficial services, fees, charges, etc. |
| 4. Payment of commission to approved agents | 12. Payments by carriers to officers, employees, etc. |
| 5. Overriding commissions | 13. Payments in respect of subcontracted functions of carriers |
| 6. Commissions generally | 14. Retrospective payments |
| 7. Payment of commission provisional initially | |
| 8. Disbursement of commission | |

NOTICE

1. Title and commencement—(1) This notice may be cited as the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983.

(2) This notice shall come into force on the day after the date of its publication in the *Gazette*.

2. Interpretation—(1) In this notice, unless the context otherwise requires,—

“The Act” means the Civil Aviation Act 1964:

“Approved agent” means a person who or which is an approved cargo agent or an approved general cargo agent:

“Approved cargo agent” means a person—

(a) Whose name (whether or not it appears on any other such list) for the time being appears on a single list of agents and locations maintained by a carrier within New Zealand for the purpose (in this notice referred to as an approved cargo agents' names and locations list); and

(b) Who or which is not an unsuitable person; and

(c) Who or which is not a carrier or an approved general cargo agent; and

(d) Who or which neither has, nor has any right to, 30 percent or more of the ownership, property, management, or profits, of a carrier or an approved general cargo agent (not being an approved general cargo agent engaged in the provision of surface transportation); and

(e) Of whose ownership, property, management, or profits, no carrier or approved general cargo agent (not being an approved general cargo agent engaged in the provision of surface transportation) has, or has a right to, 30 percent or more; and

(f) Of whose ownership, property, management, or profits, no person or group of persons (being a person or group of persons, in the opinion of that carrier, having, or having a right to, 30 percent or more of the ownership, property, management, or profits of an approved general cargo agent, whether directly or indirectly), in the opinion of that carrier, has, or has a right to, 30 percent or more, whether directly or indirectly; and

(g) Not more than 30 percent of the cargo consigned or to be consigned through whom or which is owned by that agent; and

(h) Who or which has at least one suitable location in New Zealand occupied by that person (not situated in premises that are, or are part of, or contain, office premises occupied by a carrier); and

(i) Who or which is not engaged, directly or indirectly, in the sale of carriage on charters operated under agreements that provide for some arrangement other than the charter by the operator of the aircraft concerned of all the capacity of that aircraft to one or more shippers for the carriage of the goods of that shipper or those shippers only; and

(j) Who or which has a current cargo sales agency agreement with that carrier;—

and, in relation to any carrier, means an approved cargo agent of that carrier:

“Approved general cargo agent” means a person—

(a) Whose name (whether or not it appears on any other such list) for the time being appears (whether as a direct agent or as a subcontracted agent of a direct agent) on a single list of agents and locations maintained by a carrier within New Zealand for the purpose (in this notice referred to as an approved general cargo agents' names and locations list); and

(b) Who or which is not an unsuitable person; and

(c) Who or which is not an approved passenger agent or an approved cargo agent; and

(d) Who or which neither has, nor has any right to, 30 percent or more of the ownership, property, management, or profits of an approved passenger agent or approved cargo agent; and

(e) Of whose ownership, property, management, or profits, no approved passenger agent or approved cargo agent has, or has a right to, 30 percent or more; and

(f) Of whose ownership, property, management, or profits, no person or group of persons (being a person or group of persons, in the opinion of that carrier having, or having a right to, 30 percent or more of the ownership, property, management, or profits of an approved cargo agent or approved passenger agent, whether directly or indirectly), in the opinion of that carrier, has, or has a right to, 30 percent or more, whether directly or indirectly;

(g) Who or which is neither employed by nor associated with any other person (not being a person engaged directly in the provision of transportation of some kind) who or which is, in the opinion of the carrier concerned, likely to generate or control more than one quarter of the total sales of carriage in the defined territory or proposed defined territory concerned; and

(h) Who or which has a current general cargo agency agreement with that carrier; and

(i) Where that agreement contains any provision to the effect that the agent is to, or is employed to, arrange carriage on his services of the carrier, who or which has at least one suitable location in New Zealand;—

and, in relation to any carrier, means an approved general cargo agent of that carrier:

“Approved passenger agent” and “approved passenger location” have the meanings assigned to them by clause 2 (1) of the Civil Aviation (Passenger Agents' Commission Regime) Notice 1983:

“Arrangement”, in relation to any carriage and any approved agent, means—

(a) The sale of that carriage by that agent; and

(b) The making of reservations relating to that carriage,—

(i) By that agent; or

(ii) By a carrier on whose services that carriage or any part of it is to take place, at the request of that agent; and

(c) The completion and verification of a waybill in relation to that carriage,—

(i) By that agent; or

(ii) By a carrier on whose services that carriage or any part of it is to take place, at the request of that agent; and

(d) The delivery, or arrangement of the delivery, by that agent, of the cargo concerned to the appropriate airport when ready for carriage; and

(e) The retention by that agent of all accounting documents relating to that carriage;—

and “to arrange” has a corresponding meaning:

“Cargo” means any goods carried, or intended to be carried, by air that do not comprise—

(a) Mail or other goods carried under the terms of any international postal convention; or

(b) Passenger baggage; or

(c) The property of the carrier concerned:

“Cargo sales agency agreement” means a sales agency agreement relating to the arrangement by the agent concerned of carriage on the services of the carrier concerned, and containing (*inter alia*) provisions to the effect that—

(a) The agent is at all times to maintain a bond, guarantee, or other such device, that, in the opinion of the carrier, adequately protects the carrier and the agent's customers against the insolvency of the agent; and

(b) Until any waybill forms supplied to the agent by or on behalf of the carrier or the management of a standard cargo plan are issued to a customer in respect of carriage that has been sold by the agent to that customer,—

(i) Those documents are to remain the property of the carrier or, as the case requires, the management of the standard cargo plan; and

(ii) The agent is to have no proprietary rights in respect of those documents; and

(c) All carrier identification plates supplied by the carrier to the agent are to remain the property of the carrier and the agent is to have no proprietary rights in respect of those plates; and

(d) The agent is to take such steps as the carrier specifies in respect of the safekeeping of waybill forms and carrier identification plates so supplied; and

(e) The agent is to verify every waybill completed by the agent in respect of carriage on the services of the carrier with a stamp bearing a numerical code that identifies that agent; and

(f) The agent is not to pay money received in respect of carriage arranged by the agent into any bank account into which there is at any time paid any money that is not received in respect of carriage arranged by the agent; and

(g) All money received by the agent in respect of carriage on the services of the carrier, or in respect of any related services (including any commission withheld by the agent

in accordance with a manner of transacting business on behalf of the carrier agreed with the carrier) shall, as soon as is practicable after its receipt, be paid into a bank account, and shall—

- (i) Remain the property of the carrier; and
- (ii) Be held in trust for the carrier,—

until it has been satisfactorily accounted for to the carrier; and

(h) The agent is to notify the carrier, as soon as is practicable after a location of that agent ceases to be a suitable location, of the fact that it has ceased to be a suitable location, and the date upon which it ceased to be a suitable location, and the reasons for its ceasing to be a suitable location; and

(i) The agent is, at every suitable location, to promote carriage on the services of the carrier; and

(j) The agent is, at every suitable location, to arrange the carriage on those services; and

(k) The agent is, at every suitable location, to retain copies of all receipts issued in respect of amounts collected in respect of carriage on those services so arranged; and

(l) The agent is to account to the carrier for all money collected in respect of carriage on those services so arranged; and

(m) The agent is to maintain insurance cover adequate to meet any liability for loss of, or damage to, cargo for the time being under the agent's control.

"Carriage" means any international carriage by air of cargo to which this notice applies:

"Carrier" means any person whose business it is, whether or not in conjunction with any other business, to provide carriage on its own services:

"Carrier identification plate" means a plate, or other device,—

- (a) Issued by a carrier to an agent; and
- (b) Used, or intended to be used, by that agent for printing or otherwise indicating on waybill forms completed by that agent in respect of carriage on the services of that carrier the name or identity of that carrier:

"Commission" means agency commission:

"Employee", in relation to any other person, means a person—

- (a) Who is a director of or employed by that other person; and
- (b) Who devotes all or nearly all his working time to the business of that other person; and
- (c) Who (in addition to any commission) is paid a director's fees or salary or wages by that other person; and
- (d) Whose name is carried continuously on the payroll or other disbursement records of that other person:

"General cargo agency agreement" means a sales agency agreement delegating to the agent concerned exclusively general authority to represent the carrier concerned in a defined territory in respect of the arrangement of carriage on the services of the carrier, and containing (*inter alia*) provisions to the effect that—

(a) The agent is to solicit and promote carriage on the services of the carrier; and

(b) The agent is, at one or more locations he or it occupies, to provide and maintain a suitable area to be used exclusively for, and is to use it exclusively for, the transaction of business relating to carriage on the services of the carrier; and

(c) The agent is to arrange the distribution of the carrier's timetables, promotional material, and written information relating to the carrier's charges for carriage to approved cargo agents and the general public, in the defined territory; and

(d) The agent is to cause or arrange the delivery of cargo to the receiving points designated by the carrier; and

(e) The agent is to service and supervise, in relation to the arrangement of carriage on the services of the carrier, all approved cargo agents in New Zealand;— but that contains no provision to the effect that the agent (if the agent is a carrier) is precluded from making its services available to other carriers and if that agreement contains any provision to the effect that the agent is to, or is employed to, arrange carriage on the services of the carrier, containing also all the provisions specified in the definition in this subclause of the expression "cargo sales agency agreement":

"Interline agreement" means an agreement between 2 or more carriers authorising each of them to arrange carriage over the services of the other or others:

"Person" includes a body of persons and a body corporate:

"Principal"—

(a) In relation to any approved cargo agent, means a carrier on whose approved cargo agents' names and locations list that agent's name for the time being appears; and

(b) In relation to any approved general cargo agent, means a carrier on whose approved general cargo agents' names and locations list that agent's name for the time being appears:

"Sales agency agreement" means a written agreement between a carrier and any other person (whether prepared and executed by that carrier or by some other person on that carrier's behalf) providing for that other person to act as an agent in relation to the arrangement of carriage on the services of that carrier:

"Shipper" means a person who consigns cargo; and, in relation to any cargo, means the shipper who consigns or proposes to consign it:

"Standard cargo plan" means an agreement between one or more approved agents and one or more principals to appoint and authorise a bank or other organisation, for the purpose of facilitating the provision and issue of waybill forms to agents, and the accounting for and settlement of debts between principal and agent, to perform (*inter alia*) all or any of the following functions in relation to carriage:

(a) The receipt of sales transmittals from agents and the extraction and processing of information from those transmittals:

(b) The rendering of billings to agents:

(c) The receipt of remittances from agents:

(d) The disbursement of money to principals:

"Suitable location" means a location (being a location where the agent concerned is actively and principally engaged, and has for at least 6 months been so engaged, in the promotion and sale of carriage) where (*inter alia*) the following facilities are provided by that agent:

(a) The quotation of rates and charges for carriage, and the specification of the conditions subject to which such rates and charges apply:

(b) The assistance of customers in completing the required formalities (including reservations) for carriage:

(c) The delivery, or arrangement of the delivery, of cargo ready for carriage to the appropriate airport:

(d) The acceptance (and delivery as aforesaid) of cargo that comprises or includes any restricted item:

(e) The collection of money from customers, and its remittance to carriers or a standard cargo plan:

"Unsuitable person" means a person who or which—

(a) Being an individual person (and not being a person who, in the opinion of the carrier concerned, either was not responsible for any of the acts and omissions leading to the indebtedness concerned or can now be relied upon to act properly as an agent)—

(i) Is (or is or was a director, shareholder, or person involved in the general management of a person that is) in default under a sales agency agreement with any carrier and owes it money; or

(ii) Was (or is or was a director, shareholder, or person involved in the general management of a person that was) at any time in default under a sales agency agreement with any carrier and met any of his or its debts to that carrier by recourse to a financial bond or guarantee; or

(b) Not being an individual person—

(i) Is in default under a sales agency agreement with any carrier and owes it money; or

(ii) Was at any time in default under a sales agency agreement with any carrier and met any of its debts to that carrier by recourse to a financial bond or guarantee; or

(iii) Has a director, shareholder, or person involved in its management, who is an unsuitable person:

"Waybill" means a document, with a title in any language to the effect that that document is an air consignment note or air waybill, made out by or on behalf of a shipper as evidence of a contract between that shipper and a carrier for the carriage of goods on the services of that carrier:

"Waybill form" means a document that, when completed by a shipper, is capable of constituting a waybill.

(2) Every expression defined in section 2 or section 29A (12) of the Act shall have the meaning assigned to it by that section.

(3) Where any provision of this notice provides that any person may pay any commission to any other person, that provision shall be construed as providing that—

(a) That first-mentioned person may allow, disburse, give, pay, or provide, that commission to that other person; and

(b) That other person may charge, demand, or retain, that commission from that first-mentioned person.

(4) Where a principal of any approved cargo agent has for the time being an interline agreement with any other carrier, this notice shall apply to that agent, and to the payment of commission to that agent, as if that other carrier were a part of that principal.

3. Application—This notice applies to all international carriage by air of cargo.

4. Payment of commission to approved agents—(1) Subject to the provisions of this notice, if, and only if, any approved agent arranges any carriage on the services of a principal (not being carriage by

charter), that principal may pay to that agent a commission of 5 percent of the lawful charge for that carriage.

(2) Subject to the provisions of this notice, if, and only if, any approved agent arranges any carriage by charter on the services of a principal, that principal may pay to that agent a commission of not more than 5 percent of—

- (a) The charter price; less
- (b) The sum of all taxes, demurrage, and special handling charges, applicable to that carriage.

(3) Subject to the provisions of this notice, if, and only if, any carriage on the services of a principal was arranged on the basis that the lawful charge for that carriage is to be collected upon the delivery of the cargo concerned, the approved agent who or which issued the waybill and whose name appears on it shall, for the purposes of the payment of commission by that principal under this notice, be deemed to have arranged that carriage.

(4) Subject to the provisions of this notice, if, and only if,—

(a) Any carriage on the services of a principal has been arranged by a person who or which—

- (i) Is neither a carrier nor an approved agent; but
- (ii) Was requested by an approved agent to arrange it; and

(b) Before that carriage takes place, the name of that agent has, on the written instructions of the shipper, been inserted in the appropriate box on the waybill; and

(c) That agent has a location at the destination of the cargo concerned,—

that agent shall, for the purposes of the payment of commission by that principal under this notice, be deemed to have arranged that carriage.

5. Overriding commissions—(1) Subject to the provisions of this notice, if a principal may under clause 4 (1) of this notice pay any commission to any approved general cargo agent, that principal may, in addition, pay to that agent—

(a) A commission of not more than 2½ percent of the lawful charge for the carriage concerned or, as the case requires, of the appropriate proportion of the lawful charge for some carriage of which that carriage forms part;

(b) A commission of 5 percent of the lawful charge for any carriage of the cargo concerned on a connecting through air service.

(2) Subject to the provisions of this notice, if a principal may under clause 4 (2) of this notice pay any commission to any approved general cargo agent, that principal may, in addition, pay to that agent—

(a) A commission of not more than 50 percent of that first-mentioned commission;

(b) A commission of 5 percent of the lawful charge for any carriage (not being carriage by charter) of the cargo concerned on a connecting through air service arranged by that agent;

(c) A commission of not more than 5 percent of—

- (i) The charter price of any carriage of the cargo concerned on a connecting through air charter arranged by that agent; less
- (ii) The sum of all taxes, demurrage, and special handling charges, applicable to that carriage.

(3) Subject to the provisions of this notice, if a principal may under subclause (1) or subclause (2) of clause 4 of this notice pay to any approved cargo agent any commission in respect of any carriage on the services of that principal arranged within the defined territory of an approved general cargo agent of that principal, that principal may pay to that general cargo agent a commission of not more than 50 percent of that commission or, as the case requires, of the appropriate proportion of the commission payable in respect of the arrangement of some carriage of which that carriage forms part.

(4) Subject to the provisions of this notice, if a principal may under clause 4 (3) of this notice pay to any approved agent any commission in respect of any carriage on the services of that principal arranged on the basis that the charges for it are to be collected upon delivery of the cargo concerned, that principal may—

(a) If, and only if, no commission may lawfully be paid under paragraph (b) of this subclause, pay to an approved general cargo agent in whose defined territory the lawful charge for that carriage is collected; and

(b) In every other case, pay to an approved general cargo agent in whose defined territory that waybill is issued,—

a commission of not more than 50 percent of that commission or, as the case requires, of the appropriate proportion of the commission payable in respect of the arrangement of some carriage of which that carriage forms part.

(5) Subject to the provisions of this notice, if a principal may under clause 4 (4) of this notice pay to any approved agent any commission in respect of any carriage on the services of that principal, that principal may pay to an approved general cargo agent within whose defined territory the carriage concerned was arranged and the waybill concerned was issued a commission of not more than 50 percent of that first-mentioned commission or, as the case requires, of the appropriate proportion of the commission payable in respect of the arrangement of some carriage of which that carriage forms part.

6. Commissions generally—Except as provided in this clause, no commission shall be paid under clause 4 or clause 5 of this notice unless—

(a) The person who or which arranged the carriage concerned provides a waybill relating to the cargo concerned that is completely and accurately filled out; and

(b) The name of that person (or, if that person is not an approved agent, the name of the approved agent who requested the arrangement of that carriage) is inserted in the appropriate place on that waybill; and

(c) The lawful charge or price for that carriage has been paid to the appropriate approved agent or to a carrier; and

(d) Where that charge or price has been paid to an approved agent, that charge (or that charge reduced by the amount of any commission lawfully payable to that agent) has been satisfactorily accounted for by that agent to the principal concerned.

7. Payment of commission provisional initially—No commission shall be paid under clause 4 or clause 5 of this notice unless it is paid on the basis that—

(a) Its initial payment is provisional only, until—

(i) The carriage to which it relates takes place; or

(ii) No application for a refund in respect of that carriage having been made within the time during which such an application may be made by a person entitled to such a refund, that time has expired; or

(iii) Every such application made within that time has been finally rejected,—

whichever soonest occurs; and

(b) Where a refund has been made in respect of that carriage to a person entitled to such a refund,—

(i) That commission will be recalculated; and

(ii) The agent concerned will refund (either directly or by the appropriate deduction from some other amount payable to that agent) the difference between that commission as originally calculated and the recalculated amount, unless it is not more than the equivalent (in either New Zealand currency or the appropriate local currency, as the case requires, rounded off to the nearest whole dollar or local unit) of US\$5.

8. Disbursement of commission—(1) Subject to subclause (3) of this clause, if, and only if, any commission is payable to an approved agent under clause 4 of this notice, that agent may pay all or any part of that commission to any employee who personally arranged, or personally assisted in the arrangement of, the carriage concerned on behalf of that agent.

(2) Subject to subclause (3) of this clause, if, and only if, any carriage of cargo in respect of which any commission is payable under clause 4 of this notice to an approved agent was arranged at the request of some other agent (being an approved cargo agent of the principal by which that commission is payable),—

(a) That approved agent may pay to that other agent all or any part of that commission; and

(b) That other agent may pay to any employee who personally made, or personally assisted in making, the request all or any part of the amount paid to him or it.

(3) Any approved agent may pay all or any part of any commission received under clause 4 of this notice in respect of the arrangement of the carriage of cargo to any person (not being the shipper of that cargo or the person whose name appears on the waybill for that cargo as the person to whom it is to be delivered) unless the payment would result, directly or indirectly, in the carriage of that cargo at a charge or price less than that shown in the waybill.

9. No commission payable in certain circumstances—(1) No commission shall be paid by a carrier under clause 4 or clause 5 of this notice—

(a) On or in respect of any insurance, or government tax or charge, collected by the agent concerned; or

(b) On carriage provided free, or at a charge less than that lawfully payable by members of the public for that carriage.

(2) If the lawful price for any carriage by charter has been paid to the agent concerned by cheque, no commission shall be paid to that agent under clause 4 (3) of this notice in respect of the arrangement of that carriage unless that cheque—

(a) Is made out to the principal concerned; and

(b) Is accompanied by a certificate in writing by the charterer that that agent arranged that carriage; and

(c) Has been received by that principal.

(3) No commission shall be paid to an approved agent under clause 4 or clause 5 of this notice in respect of carriage provided for or at the request of the New Zealand Government, any department of State, any agent of the New Zealand Government, any foreign government, or any agency or agent of any foreign government, unless either—

(a) Full payment for that carriage was made to that approved agent; or

- (b) That carriage is paid for by a government bill of lading drawn in favour of that approved agent; or
- (c) That carriage was arranged by an approved general cargo agent and paid for directly to a carrier.

10. Payments pursuant to interline agreements—(1) Subject to the provisions of this notice, any carrier may pay to any other carrier with which that first-mentioned carrier has an interline agreement, in respect of carriage on the services of that first-mentioned carrier arranged by that other carrier, a commission of not more than 5 percent of the lawful charge for that carriage.

(2) No commission shall be paid under subclause (1) of this clause—

- (a) Unless—
 - (i) The lawful charge for the carriage concerned; or
 - (ii) That charge reduced by the amount of that commission,—
 has been paid to the carrier on whose services the carriage is arranged:

(b) On any sum refunded in respect of cancelled or unused carriage.

(3) In subclause (4) of this clause,—

“Carrier agent”, in relation to any carrier, means an approved general cargo agent of that carrier that is also a carrier.

“Maximum commission”, in relation to any carriage on the services of a carrier arranged by a carrier agent, means the greater of the following amounts:

(a) The commission payable by that carrier to that agent in respect of the arrangement of that carriage, under clause 4 of this notice:

(b) The greatest commission payable by that carrier to that agent in respect of the arrangement of that carriage, under subclause (1) of this clause.

(4) No carrier shall pay to any carrier agent in respect of the arrangement of any carriage on the services of that carrier any commissions under—

- (a) Clause 4 of this notice; or
- (b) Subclause (1) of this clause—

that together exceed the maximum commission.

11. Beneficial services, fees, charges, etc.—(1) To the extent that the doing of any of the following things may constitute paying a commission, a principal may pay any such commission:

- (a) Furnish to any approved cargo agent any display, advertising support material, or promotional literature, relating to carriage or to related services, of a kind used by the principal for its own purposes:
- (b) Advertise, at normal commercial rates, in any trade journal published by approved cargo agents or any approved cargo agent:
- (c) Pay not more than half the cost to an approved cargo agent of any standard telephone link between that agent and the principal:
- (d) Provide any manual, or other instructions or guidance, to assist an approved cargo agent in his or its business:
- (e) Provide or arrange reasonable entertainment for any approved cargo agent:
- (f) In accordance with local custom, make any gift of congratulation or condolence to an approved cargo agent:

(g) Assist any approved general cargo agent in the performance of his or its cargo sales and service functions.

(2) Without limiting the generality of paragraph (g) of subclause (1) of this clause, assistance to any agent under that paragraph may include—

- (a) The provision of or assistance with any promotional or advertising campaign:
- (b) The bearing of any extraordinary or exceptional expenses connected with such a campaign:
- (c) The reimbursement to the agent of any expenditure that was—
 - (i) Of a kind normally passed on to principals; or
 - (ii) Of an exceptional nature, and requested or authorised by the principal.

12. Payments by carriers to officers, employees, etc.—Any carrier may pay to any person who is a director, officer, or full-time employee of that carrier, any commission it thinks fit in relation to carriage arranged or sold by that person.

13. Payments in respect of subcontracted functions of carriers—Where any person has agreed with any carrier to perform on behalf of that carrier a function of a kind normally performed by carriers and not by approved agents, that carrier may pay to that person in respect of the performance of that function any commission it thinks fit.

14. Retrospective payments—After the entry of the name of any person or the address of any location on approved cargo agents' names and locations list, there may be paid to any person any commission that might have been paid to that person under this notice if that entry had been made as soon as it was applied for.

Dated at Wellington this 8th day of September 1983.

GEORGE F. GAIR,
Minister of Civil Aviation and Meteorological Services.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

This notice contains, in an amended form, those provisions of the Civil Aviation (Agents' Commission Regime) Notice 1983 that related to the international carriage by air of cargo. A separate notice, revoking that notice, has been promulgated relating to the international carriage by air of passengers and their baggage.

The amendments have 2 effects, first, some drafting simplifications have been made possible by the splitting of the original notice; and some other drafting amendments have been made. Secondly, clauses 4 and 5 have been expanded (in relation to the equivalent provisions of the original notice) so as to deal exhaustively with the payment of commission in relation to the arrangement of the carriage of cargo on a payment on delivery basis.

*The Civil Aviation (Passenger Agents' Commission Regime)
Notice 1983*

PURSUANT to section 29A (6) of the Civil Aviation Act 1964, the Minister of Civil Aviation and Meteorological Services hereby gives the following notice.

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2. Interpretation	12. No commission payable in certain circumstances
3. Application	13. Payments pursuant to inter-line agreements
4. Payment of commission to approved agents	14. Beneficial services, fees, charges, etc.
5. Overriding commissions	15. Payments by carriers to officers, employees, etc.
6. Inclusive tour support	16. Payments in respect of sub-contracted functions of carriers
7. Commissions generally	17. Retrospective payments
8. Payment of commission provisionally initially	18. Transitional
9. Disbursement of commission	19. Revocation
10. Payments in respect of sub-contracted functions of agents	

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2. Interpretation—(1) In this notice, unless the context otherwise requires,—

“The Act” means the Civil Aviation Act 1964;

“Approved agent” means a person who or which is an approved general sales agent or an approved passenger agent;

“Approved cargo agent” and “approved cargo location” have the meanings assigned to them by clause 2 (1) of the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983;

“Approved general sales agent” means a person—

(a) Whose name (whether or not it appears on any other such list) for the time being appears (whether as a direct agent or as a subcontracted agent of a direct agent) on a single list of agents and locations maintained by a carrier within New Zealand for the purpose (in this notice referred to as an approved general sales agents' names and locations list); and

(b) Who or which is not an unsuitable person; and

(c) Who or which is not an approved cargo agent or an approved passenger agent; and

(d) Who or which does not occupy any premises that are, or are part of, or contain, an approved location of any approved passenger agent, an approved cargo location, or an approved tour location; and

(e) Who or which neither has, nor has any right to, 30 percent or more of the ownership, property, management, or profits of an approved cargo agent or approved passenger agent; and

(f) Of whose ownership, property, management, or profits, no approved cargo agent or approved passenger agent has, or has a right to, 30 percent or more; and

(g) Of whose ownership, property, management, or profits, no person or group of persons (being a person or group of persons, in the opinion of that carrier having, or having a right to, 30 percent or more of the ownership, property, management, or profits of an approved cargo agent or approved passenger agent, whether directly or indirectly), in the opinion of that carrier, has, or has a right to, 30 percent or more, whether directly or indirectly; and

(h) Who or which is neither employed by nor associated with any other person (not being a person engaged directly in the provision of transportation of some kind) who or which is, in the opinion of that carrier, likely to generate or control more than one quarter of the total sales of travel in the defined territory or proposed defined territory concerned; and

(i) Who or which has a current general sales agency agreement with that carrier;—

and, in relation to any carrier, means an approved general sales agent of that carrier.

“Approved location”,—

(a) In relation to any approved general sales agent and any principal of that agent, means a location occupied by that agent—

(i) The address of which for the time being appears on the approved general sales agents' names and locations list of that principal; and

(ii) Where there are employed at least 2 qualified persons; and

(b) In relation to any approved passenger agent and any principal of that agent, means a suitable location occupied by that agent and open to the general public during normal business hours, the address of which for the time being appears on the approved passenger agents' names and locations list of that principal:

“Approved passenger agent” means a person—

(a) Whose name (whether or not it appears on any other such list) for the time being appears on a single list of agents and locations maintained by a carrier within New Zealand for the purpose (in this notice referred to as an approved passenger agents' names and locations list); and

(b) Who or which is not an unsuitable person; and

(c) Who or which is not an approved general sales agent; and

(d) Who or which neither has, nor has any right to, 30 percent or more of the ownership, property, management, or profits, of an approved general sales agent; and

(e) Of whose ownership, property, management, or profits, no approved general sales agent has, or has a right to, 30 percent or more; and

(f) Of whose ownership, property, management, or profits, no person or group of persons (being a person or group of persons, in the opinion of that carrier having, or having a right to, 30 percent or more of the ownership, property, management, or profits of an approved general sales agent, whether directly or indirectly), in the opinion of that carrier, has, or has a right to, 30 percent or more, whether directly or indirectly; and

(g) Who or which has a current passenger sales agency agreement with that carrier;—

and, in relation to any carrier, means an approved passenger agent of that carrier:

“Approved tour location”, in relation to any approved passenger agent and any principal of that agent, means a suitable location occupied by that agent, used exclusively for the sale of tours arranged by that agent and not open to the general public during normal business hours, whose address for the time being appears on the approved passenger agents' names and locations list of that principal:

“Arrangement”, in relation to any travel and any approved agent, means—

(a) The sale of that travel by that agent; and

(b) The making of reservations in relation to that travel,—

(i) By that agent; or

(ii) By means of some electronic equipment that is, with the consent and under the control of a carrier, connected directly to the reservations system of that carrier, by some other approved agent at the request of that agent; and

(c) The issue of traffic documents relating to that travel,—

(i) By that agent; or

(ii) By a carrier on whose services that travel or any part of it is to take place, at the request of that agent; or

(iii) By means of some electronic equipment as aforesaid, by some other approved agent at the request of that agent; and

(d) The retention by that agent of all accounting documents relating to that travel;—

and “to arrange” has a corresponding meaning:

“Carriage” means international carriage by air:

“Carrier” means any person whose business it is, whether or not in conjunction with any other business, to provide travel on its own services:

“Carrier identification plate” means a plate, or other device,—

(a) Issued by a carrier to an agent; and

(b) Used, or intended to be used, by that agent for printing or otherwise indicating on traffic documents issued by that agent in respect of travel on the services of that carrier the name or identity of that carrier:

“Commission” means agency commission:

“Employee”, in relation to any other person, means a person—

(a) Who is a director of or employed by that other person; and

(b) Who devotes all or nearly all his working time to the business of that other person; and

(c) Who (in addition to any commission) is paid a director's fees or salary or wages by that other person; and

(d) Whose name is carried continuously on the payroll or other disbursement records of that other person:

“Excess baggage”, in relation to the travel of any passenger, means the extent to which that passenger's baggage exceeds the amount that may be carried free by the carrier on whose services that travel takes place or is intended to take place;

“Excess baggage charge” means a charge made by a carrier in respect of excess baggage:

"Excess value charge" means a charge made by a carrier in respect of the extent to which the declared value of any baggage exceeds—

(a) A sum calculated at the rate of 250 French gold francs per kilogram, in the case of checked baggage; or

(b) A sum equivalent to 5000 French gold francs per passenger in the case of unchecked baggage:

"General sales agency agreement" means a sales agency agreement delegating to the agent concerned exclusively general authority to represent the carrier concerned in a defined territory in respect of the arrangement of travel on the services of that carrier, and containing (*inter alia*) provisions to the effect that—

(a) The agent is to solicit and promote travel on the services of the carrier; and

(b) The agent is, at one or more locations he or it occupies, to provide and maintain a suitable area to be used exclusively for, and is to use it exclusively for, the transaction of business relating to travel on the services of the carrier; and

(c) The agent is to service and supervise, in relation to the arrangement of travel on the services of the carrier, all approved passenger agents who or which have an approved location or approved tour location in that defined territory,—

and, if that agreement contains any provision to the effect that the agent is to, or is employed to, arrange travel on the services of the carrier, containing also provisions to the effect specified in paragraphs (a) to (g) in the definition in this subclause of the expression "passenger sales agency agreement", and provisions to the effect that—

(d) The agent is, at every approved location, to arrange travel on the services of the carrier; and

(e) The agent is, at every approved location, to retain copies of all receipts issued in respect of fares collected in respect of travel on those services so arranged; and

(f) The agent is to account to the carrier for all money collected in respect of travel on those services so arranged:

"Inclusive tour" means a combination of travel and some other service or services (not comprising solely surface transportation on a public transport service):

"Interline agreement" means an agreement between 2 or more carriers authorising each of them to arrange travel over the services of the other or others:

"Involuntary change of routing", in relation to any travel, means the failure of the carrier on whose services that travel was arranged to provide that travel in accordance with the ticket of the passenger concerned if, and only if, there is substituted for that travel on those services—

(a) Travel on the services of some other carrier; or

(b) Some other travel; or

(c) Some form of surface transportation:

"Miscellaneous charges order" means a document (whether described as a miscellaneous charges order or as an exchange order), issued by or on behalf of a carrier, requesting the issue of a passenger ticket or the provision of some other service, to a person specified in that document:

"Passenger sales agency agreement" means a sales agency agreement relating to the arrangement by the agent concerned of travel on the services of the carrier concerned, and containing (*inter alia*) provisions to the effect that—

(a) The agent is at all times to maintain a bond, guarantee, or other such device, that, in the opinion of the carrier, adequately protects the carrier and the agent's customers against the insolvency of the agent; and

(b) Until any traffic documents supplied to the agent by or on behalf of the carrier or the management of a standard bank plan are issued to a customer in respect of travel that has been sold by the agent to that customer,—

(i) Those documents are to remain the property of the carrier or, as the case requires, the management of the standard bank plan; and

(ii) The agent is to have no proprietary rights in respect of those documents; and

(c) All carrier identification plates supplied by the carrier to the agent are to remain the property of the carrier and the agent is to have no proprietary rights in respect of those plates; and

(d) The agent is to take such steps as the carrier specifies in respect of the safekeeping of traffic documents and carrier identification plates so supplied; and

(e) The agent is to verify every ticket issued by the agent in respect of the travel on the services of the carrier with a stamp bearing a numerical code that identifies both the agent and the location at which that travel was arranged; and

(f) The agent is not to pay money received in respect of travel arranged by the agent into any bank account into which there is at any time paid any money that is not received in respect of travel arranged by the agent; and

(g) All money received by the agent in respect of travel on the services of the carrier, or in respect of any related services (including any commission withheld by the agent in accordance with a manner of transacting business on behalf of the carrier agreed with the carrier) shall, as soon as is practicable after its receipt, be paid into a bank account, and shall—

(i) Remain the property of the carrier; and

(ii) Be held in trust for the carrier,—

until it has been satisfactorily accounted for to the carrier; and

(h) The agent is to notify the carrier, as soon as is practicable after a location of that agent ceases to be an approved location or approved tour location, of the fact that it has ceased to be an approved location or approved tour location, and the date upon which it ceased to be an approved location or approved tour location, and the reasons for its ceasing to be an approved location or approved tour location; and

(i) The agent is, at every approved location and approved tour location, to arrange travel on the services of the carrier; and

(j) The agent is, at every approved passenger location and approved tour location, to retain copies of all receipts issued in respect of fares collected in respect of travel on those services so arranged; and

(k) The agent is to account to the carrier for all money collected in respect of the travel on those services so arranged:

"Person" includes a body of persons and a body corporate:

"Prepaid ticket advice" means a notification to a carrier or an agent of a carrier in one place that the lawful fare or other payment for the arrangement by that carrier or agent of some travel specified in that advice has been paid at some other place:

"Principal",—

(a) In relation to any approved general sales agent, means a carrier on whose approved general sales agents' names and locations list that agent's name for the time being appears; and

(b) In relation to any approved passenger agent, means a carrier on whose approved passenger agents' names and locations list that agent's name for the time being appears:

"Qualified person", in relation to any location, means a person employed full-time at that location who—

(a) Is qualified under the New Zealand Aviation and Travel Industry Training Board Structured Travel Industry Training Programme to level 2 (Advanced Certificate of Travel Competency); or

(b) Is a member of the New Zealand Institute of Travel:

"Qualifying inclusive tour" means an inclusive tour all the travel component of which is provided, or intended to be provided, either—

(a) At a fare lawfully available only in respect of travel that is an integral component of an inclusive tour, and which—

(i) Unless provision to the contrary is made in the appropriate relevant tariff, covers a route that returns to the point at which it commenced; and

(ii) Includes, for a duration specified in that relevant tariff in that behalf, sleeping accommodation of a kind provided to members of the public generally at commercial rates; and

(iii) Includes one or more additional attractions or facilities such as sightseeing, coach tours, entertainment, admission to any place or event, or the provision of a guide or equipment; and

(iv) Is described in literature, published by the person who arranged or intends to arrange the tour, that is available to the public generally; and

(v) Is sold as an indivisible product to members of the public generally; or

(b) At a fare lawfully available to members of the public generally, and not restricted to travel that is an integral component of an inclusive tour, and which—

(i) Includes, at the beginning, the end, or any intermediate point, of its route, either sleeping accommodation of a kind provided to members of the public generally at commercial rates, or one or more additional attractions or facilities such as those described in paragraph (a) (iii) of this definition; and

(ii) Is described in literature published by the person who arranged or intends to arrange the tour, that is available to members of the public generally:

"Sales agency agreement" means a written agreement between a carrier and any other person (whether prepared and executed by that carrier or by some other person on that

carrier's behalf) providing for that other person to act as an agent in relation to the arrangement of travel on the services of that carrier:

"Standard bank plan" means an agreement between one or more approved agents and one or more principals to appoint and authorise a bank or other organisation, for the purpose of facilitating the provision and issue of traffic documents to agents, and the accounting for and settlement of debts between principal and agent, to perform (*inter alia*) all or any of the following functions in relation to travel and the carriage of baggage:

(a) The receipt of sales transmittals from agents and the extraction and processing of information from those transmittals:

(b) The rendering of billings to agents:

(c) The receipt of remittances from agents:

(d) The disbursement of money to principals:

"Suitable location", in relation to any person, means a location occupied by that person (not situated at an airport or in office premises that are, or are part of, or contain, office premises occupied by any other person who is a party to a sales agency agreement)—

(a) Where, during ordinary business hours, there are continuously employed, or for a period of 3 months ending within the previous 60 days there were continuously employed—

(i) At least 2 qualified persons; or

(ii) One qualified person and at least one student member of the New Zealand Institute of Travel; or

(b) Where, during ordinary business hours, there is continuously employed at least one person who has demonstrated (in the opinion of the principal concerned) a satisfactory ability to arrange travel, if that principal is satisfied that—

(i) That location is in a small community; and

(ii) At any time during the previous 3 years there was in that community no other suitable location:

"Traffic document" means any passenger ticket form, baggage check form, miscellaneous charges order form, or other accountable form (being a form for travel or for other carriage or services connected with travel, whether issued manually, mechanically, or electronically), and whether or not bearing the preprinted identification of an individual carrier, supplied to approved agents for issue to their customers,—

(a) By a principal; or

(b) Under a standard bank plan:

"Transportation order" means a form approved by a carrier against which (when completed with the names of the passengers concerned, the routing itinerary, the class of travel, and the fare) that carrier has agreed to issue tickets for the travel of those passengers:

"Travel" means any carriage of passengers to which this notice applies:

"Unsuitable person" means a person who or which—

(a) Being an individual person (and not being a person who, in the opinion of the carrier concerned, either was not responsible for any of the acts and omissions leading to the indebtedness concerned or can now be relied upon to act properly as an agent)—

(i) Is (or is or was a director, shareholder, or person involved in the general management of a person that is) in default under a sales agency agreement with any carrier and owes it money; or

(ii) Was (or is or was a director, shareholder, or person involved in the general management of a person that was) at any time in default under a sales agency agreement with any carrier and met any of his or its debts to that carrier by recourse to a financial bond or guarantee; or

(b) Not being an individual person—

(i) Is in default under a sales agency agreement with any carrier and owes it money; or

(ii) Was at any time in default under a sales agency agreement with any carrier and met any of its debts to that carrier by recourse to a financial bond or guarantee; or

(iii) Has a director, shareholder, or person involved in its management, who is an unsuitable person.

(2) Every expression defined in section 2 or section 29A (12) of the Act shall have the meaning assigned to it by that section.

(3) Where any provision of this notice provides that any person may pay any commission to any other person, that provision shall be construed as providing that—

(a) That first-mentioned person may allow, disburse, give, pay, or provide, that commission to that other person; and

(b) That other person may charge, demand, or retain, that commission from that first-mentioned person.

(4) Where a principal of any approved passenger agent has for the time being an interline agreement with any other carrier, this notice shall apply to that agent, and to the payment of commission to that agent under this notice, as if that other carrier were a part of that principal.

3. Application—This notice applies to all carriage of passengers, and to all carriage of passengers' baggage.

4. Payment of commission to approved agents—(1) Subject to the provisions of this notice, if, and only if, any approved agent arranges at an approved location any travel on the services of a principal (not being travel that forms part of an inclusive tour or travel by charter), that principal may pay to that agent a commission of 9 percent of the lawful fare for that travel.

(2) Subject to the provisions of this notice, if, and only if, any approved agent arranges at an approved location or approved tour location any travel on the services of a principal (being travel that forms part of an inclusive tour and not travel by charter), that principal may pay to that agent a commission of 9 percent of the lawful fare for that travel.

(3) Subject to the provisions of this notice, if, and only if, any approved agent arranges at an approved location or approved tour location travel by charter under a written agreement with a single charterer and a principal for the entire capacity of an aircraft of that principal, that principal may pay to that agent a commission of not more than 5 percent of—

(a) The charter price; less

(b) The sum of all taxes, demurrage, and special handling charges, applicable to that travel.

(4) Subject to the provisions of this notice, if, and only if, an approved agent (not being a carrier) has at an approved location or approved tour location collected the lawful fare for travel on the services of a principal and requested the issue of a prepaid ticket advice relating to that travel, that principal may pay to that agent a commission of 9 percent of that fare.

(5) Subject to the provisions of this notice, if, and only if,—

(a) An approved agent (not being a carrier) has at an approved location or approved tour location arranged any travel on the services of a principal pursuant to a prepaid travel advice; and

(b) The lawful fare for that travel has been paid directly to a carrier,—

that principal may pay to that agent a commission of 9 percent of that fare.

(6) Subject to the provisions of this notice, if, and only if,—

(a) An approved passenger agent has at an approved location or approved tour location arranged any travel on the services of a principal pursuant to a prepaid travel advice; and

(b) That advice was arranged by an approved agent to whom commission may be paid under subclause (4) of this clause in respect of that travel,—

that principal may pay to that first-mentioned agent commission (being a handling fee) equivalent to US\$5.

(7) No commission shall be paid to any agent under subclause (6) of this clause in respect of any travel—

(a) Until the travel has begun; or

(b) If any commission may be paid to the agent under subclause (4) of this clause in respect of the travel; or

(c) In respect of the presentation of a return or continuing portion of a round trip ticket or circle trip ticket, or of an exchange order.

5. Overriding commissions—(1) Subject to the provisions of this notice, if a principal may under any of subclauses (1), (2), and (4) of clause 4 of this notice pay any commission to any approved general sales agent, that principal may, in addition, pay to that agent—

(a) A commission of not more than 3 percent of the lawful fare for the travel concerned or, as the case requires, of the appropriate proportion of the lawful fare for some travel of which that travel forms part;

(b) A commission of 9 percent of the lawful fare for any travel of the passengers concerned on a connecting through air service arranged at the approved location concerned (not being travel by charter).

(2) Subject to the provisions of this notice, if a principal may under clause 4 (3) of this notice pay any commission to any approved general sales agent, that principal may, in addition, pay to that agent—

(a) A commission of not more than 60 percent of that first-mentioned commission;

(b) A commission of 9 percent of the lawful fare for any travel arranged at the approved location concerned (not being travel by charter) of the passengers concerned on a connecting through air service;

(c) A commission of not more than 5 percent of—

(i) The charter price of any travel arranged at that location of the passengers concerned by connecting through air charter; less

(ii) The sum of all taxes, demurrage, and special handling charges, applicable to that travel.

(3) Subject to the provisions of this notice, if a principal may under any of subclauses (1), (2), and (4) of clause 4 of this notice pay any commission to any approved passenger agent, in respect of any travel on the services of that principal arranged, or any prepaid ticket advice relating to any such travel whose issue was requested, at a location that is within the defined territory of an approved general sales agent, that principal may pay to that general sales agent a commission of not more than 3 percent of the lawful fare for that travel or, as the case requires, of the appropriate proportion of the lawful fare for some travel of which that travel forms part.

(4) Subject to the provisions of this notice, if a principal may under clause 4 (3) of this notice pay any commission to any approved passenger agent in respect of any travel arranged at a location that is within the defined territory of a general sales agent, that principal may pay to that approved general sales agent a commission of not more than 60 percent of that proportion of that first-mentioned commission that relates to travel on the services of that principal.

(5) Subject to the provisions of this notice, if, and only if, any approved general sales agent (being a carrier) collects at an approved location the lawful fare for travel on the services of a principal and issues a prepaid ticket advice relating to that travel, that principal may pay to that agent a commission of not more than 3 percent of the lawful fare for that travel or, as the case requires, of the appropriate proportion of the lawful fare for some travel of which that travel forms part.

(6) Subject to the provisions of this notice, if, and only if, no commission may be paid to an approved general sales agent under any of subclauses (1), (3), and (5) of this clause in respect of the issue at an approved location within that agent's defined territory of a prepaid ticket advice relating to travel on the services of a principal, that principal may pay to the approved general sales agent (if any) within whose defined territory travel is arranged at an approved location by that other approved general sales agent or an approved passenger agent a commission of not more than 3 percent of the lawful fare for that travel or, as the case requires, of the appropriate proportion of the lawful fare for some travel of which that travel forms part.

6. Inclusive tour support—If, and only if,—

- (a) A carrier and any person who is not a carrier (whether or not that person is an approved agent) have entered into a written agreement relating to the costs of developing, or advertising or promoting to the general public, a qualifying inclusive tour arranged or to be arranged by that person; and
- (b) That tour includes travel on the services of that carrier; and
- (c) All the literature relating to that tour—
 - (i) Published by that person; and
 - (ii) Available to the public generally—contains or includes, or is endorsed with, an inclusive tour code assigned to that tour by that carrier,—
 that carrier may pay to that person any commission that does not exceed the total amount of those costs.

7. Commissions generally—(1) Except as provided in this clause, no commission shall be paid under clause 4 or clause 5 of this notice unless—

- (a) The lawful fare or charter price for the travel concerned has been paid to the appropriate approved agent; and
 - (b) That fare or price (or that fare or price reduced by the amount of any commission lawfully payable to that agent by the principal concerned) has been paid by that agent to that principal, either directly or through a standard bank plan.
- (2) Subject to the provisions of this notice, a principal may pay a commission under clause 4 or clause 5 of this notice in respect of any travel, notwithstanding that the lawful fare or charter price has not been paid to the agent concerned, if that travel has been arranged pursuant to a credit plan recognised by that principal for the purpose.

(3) Subject to the provisions of this notice, a principal may pay a commission under either of subclauses (5) and (6) of clause 4 of this notice, or under any of subclauses (3), (4), and (6) of clause 5 of this notice, notwithstanding that payment in respect of the prepaid travel advice concerned was made not to the agent concerned but to some other approved agent or to a carrier.

8. Payment of commission provisional initially—No commission shall be paid under clause 4 or clause 5 of this notice unless it is paid on the basis that—

- (a) Its initial payment is provisional only, until—
 - (i) The travel to which it relates takes place; or
 - (ii) No application for a refund in respect of that travel having been made within the time during which such an application may be made by a person entitled to such a refund, that time has expired; or
 - (iii) Every such application made within that time has been finally rejected,—
 whichever soonest occurs; and
- (b) Where a refund has been made in respect of that travel to a person entitled to such a refund, and the failure of that

travel to take place did not result from an involuntary change or routing involving the substitution of surface transportation for confirmed travel,—

- (i) That commission will be recalculated; and
- (ii) The agent concerned will refund (either directly or by the appropriate deduction from some other amount payable to that agent) the difference between that commission as originally calculated and the recalculated amount, unless it is not more than the equivalent (in either New Zealand currency or the appropriate local currency, as the case requires, rounded up to the next whole dollar or local unit) of US\$6.

9. Disbursement of commission—(1) Where any travel in respect of which any commission is payable under clause 4 of this notice to an approved agent was arranged at an approved location of that agent, that agent may pay all or any part of that commission to any employee who, at that location, personally arranged or personally assisted in the arrangement of, that travel on behalf of that agent.

(2) Where any travel in respect of which any commission is payable to an approved agent under clause 4 of this notice was arranged at the request of some other agent (being an approved passenger agent of the principal by which that commission is payable),—

- (a) That approved agent may pay to that other agent all or any part of that commission; and
- (b) That other agent may pay to any employee who, at an approved location or approved tour location of that other agent, personally made, or personally assisted in making, that request all or any part of the amount paid to him or it.

10. Payments in respect of subcontracted functions of agents—Where any approved agent has, in respect of travel arranged or to be arranged by any other approved agent, agreed with that other agent to—

- (a) Make reservations; and
 - (b) Complete and issue traffic documents—
- by means of some electronic equipment that is, with the consent and under the control of a carrier who is a principal of both those agents, connected directly to the reservations system of that carrier, that other agent may pay to that first-mentioned agent, in respect of the performance of those functions in relation to any travel arranged by that other agent, any commission that does not exceed the commission lawfully payable to that other agent in respect of the arrangement of that travel.

11. Involuntary changes of routing—Where—

- (a) An approved passenger agent has refunded to a principal any commission paid in respect of any travel; and
 - (b) That travel failed to take place as a result of an involuntary change of routing,—
- that principal may pay to that agent all or any part of any commission received by that principal from any new transporting carrier on whose services equivalent travel took place.

12. No commission payable in certain circumstances—(1) No commission shall be paid under clause 4 or clause 5 of this notice—

- (a) On travel arranged pursuant to a miscellaneous charges order or transportation order, unless that travel is specifically described in that order; or
 - (b) In respect of any excess baggage charge or excess value charge; or
 - (c) On or in respect of any insurance or any government tax or charge, collected by the agent concerned; or
 - (d) On travel provided free, or at a charge or fare less than that lawfully payable by members of the public for that travel.
- (2) No commission shall be paid to an approved agent under clause 4 or clause 5 of this notice in respect of travel provided for or at the request of the New Zealand Government, any department of State, any agent of the New Zealand Government, any foreign government, or any agency or agent of any foreign government, unless either—

- (a) Full payment for that travel was made to that approved agent; or
- (b) That travel is paid for by a government transportation request drawn in favour of that approved agent; or
- (c) That travel was arranged by an approved general sales agent, and paid for directly to a carrier.

13. Payments pursuant to interline agreements—(1) Subject to the provisions of this notice, any carrier may pay to any other carrier with which that first-mentioned carrier has an interline agreement, in respect of travel on the services of that first-mentioned carrier arranged by that other carrier, a commission of not more than 9 percent of the lawful fare for that travel.

(2) No commission shall be paid under subclause (1) of this clause—

- (a) Unless—
 - (i) The lawful charge or fare for the travel concerned; or
 - (ii) That charge or fare reduced by the amount of that commission,—
 has been paid to the carrier on whose services that travel is arranged:

- (b) On any sum refunded in respect of cancelled or unused travel:
- (c) In respect of any travel arranged pursuant to a miscellaneous charges order, unless that travel is specifically described in that order:
- (d) On mail charges, excess baggage charges, or excess value charges:
- (e) In respect of any travel arranged pursuant to a credit plan recognised by the carrier on whose services that travel is arranged.
- (3) In subclause (4) of this clause,—
- “Carrier agent”, in relation to any carrier, means an approved general sales agent of that carrier that is also a carrier:
- “Maximum commission”, in relation to any travel on the services of a carrier arranged by a carrier agent, means the greater of the following amounts:
- (a) The commission payable by that carrier to that agent in respect of the arrangement of that travel, under subclause (1) or subclause (2) or subclause (3) of clause 4 of this notice:
- (b) The greatest commission payable by that carrier to that agent in respect of the arrangement of that travel, under subclause (1) of this clause.
- (4) No carrier shall pay to any carrier agent in respect of the arrangement of any travel on the services of that carrier any commissions under—
- (a) Subclause (1) or subclause (2) or subclause (3) of clause 4 of this notice; or
- (b) Subclause (1) of this clause—
- that together exceed the maximum commission.

14. Beneficial services, fees, charges, etc.—(1) To the extent that the doing of any of the following things may constitute paying a commission, a principal may pay any such commission:

- (a) Furnish to any approved passenger agent any display, advertising support material, or promotional literature, relating to travel or to related services, of a kind used by the principal for its own purposes:
- (b) Advertise, at normal commercial rates, in any trade journal published by approved passenger agents or any approved passenger agent:
- (c) Pay not more than half the cost to an approved passenger agent of any standard telephone link between that agent and that principal:
- (d) Provide any manual, or other instructions or guidance, to assist an approved passenger agent in his or its business:
- (e) Provide or arrange reasonable entertainment for any approved passenger agent:
- (f) In accordance with local custom, make any gift of congratulation or condolence to an approved passenger agent:
- (g) Sell inclusive tours arranged by an approved passenger agent:
- (h) Reproduce in a publication of that principal any itinerary of an inclusive tour contained in any publication of an approved passenger agent who arranged that tour, together with that agent's name, the address of any approved locations or approved tour locations of that agent, and the telephone numbers of those locations:
- (i) Assist any approved general sales agent in the performance of his or its passenger sales and service functions.
- (2) Without limiting the generality of paragraph (i) of subclause (1) of this clause, assistance to any agent under that paragraph may include—
- (a) The provision of or assistance with any promotional or advertising campaign:
- (b) The bearing of any extraordinary or exceptional expenses connected with such a campaign:
- (c) The reimbursement to that agent of any expenditure that was—
- (i) Of a kind normally passed on to principals; or
- (ii) Of an exceptional nature, and requested or authorised by the principal.

15. Payments by carriers to officers, employees, etc.—Any carrier may pay to any person who is a director, officer, or full-time employee of that carrier, any commission it thinks fit in relation to travel arranged or sold by that person.

16. Payments in respect of subcontracted functions of carriers.—Where any person has agreed with any carrier to perform on behalf of that carrier a function of a kind normally performed by carriers and not by approved agents, that carrier may pay to that person in respect of the performance of that function any commission it thinks fit.

17. Retrospective payments.—After the entry of the name of any person or the address of any location on an approved passenger agents' names and locations list there may be paid to any person any commission that might have been paid to that person under this notice if that entry had been made as soon as it was applied for.

18. Transitional.—(1) Where, during the month of June 1983, an agent received from a carrier, directly or indirectly, any commission relating to the arrangement at any location of the carriage of any passenger on the services of that carrier, this notice shall apply—

- (a) To that agent as if he or it were an approved passenger agent; and
- (b) To that location as if it were an approved location or, as the case requires, an approved tour location,—
- until the 30th day of September 1983 or, where that agent has, before the 1st day of October 1983 applied to that carrier for the entry of the name of that agent and the address of that location on that carrier's approved passenger agents' names and locations list, until either—
- (c) The 31st day of March 1984; or
- (d) The day on which that carrier informs that agent of the success or failure of the application,—
- whichever is the sooner.

(2) Where, during the month of June 1983, any agent received from a carrier pursuant to a general sales agency agreement any commission relating to the arrangement at a location within that agent's defined territory of travel on the services of that carrier, this notice shall apply—

- (a) To that agent as if he or it were an approved general sales agent; and
- (b) To every location of that agent situated within that defined territory as if it were an approved location,—
- until the 30th day of September 1983.

(3) For the avoidance of doubt, it is hereby declared that where, under any of the foregoing provisions of this clause, this notice applies—

- (a) To any person as if he or it were an approved agent of any category; or
- (b) To any location as if it were an approved location or approved tour location,—

until the 30th day of September 1983, the 31st day of March 1984, or the happening of an event specified in that provision, this notice shall, after that date or (as the case requires) after the happening of that event, apply to that person or location as if that provision had never formed part of this notice.

19. Revocation.—The Civil Aviation (Agents' Commission Regime) Notice 1983* is hereby consequentially revoked.

**Gazette*, 1983, p. 2607

Dated at Wellington this 8th day of September 1983.

GEORGE F. GAIR,
Minister of Civil Aviation and Meteorological Services.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

This notice revokes the Civil Aviation (Agents' Commission Regime) Notice 1983, and contains, in an amended form, those provisions of that notice that related to the international carriage by air of passengers and their baggage. A separate notice has been promulgated relating to the international carriage by air of cargo.

The amendments have 3 effects. First, some drafting simplifications have been made possible by the splitting of the original order; and some other drafting amendments have been made. Secondly, clauses 4 and 5 have been expanded so as to deal exhaustively with the payment of commission in relation to the issue of pre-paid ticket advices, and in relation to the arrangement of travel pursuant to such advices. Thirdly, the transitional provisions of the original notice have been expanded.

It is the practice of most carriers not to give formal approval to new agents until those agents have operated successfully on a trial basis. During the trial period no commission is paid; but after an agent has gained formal approval, the carrier may retrospectively pay commission in respect of that period. The original notice gave to certain existing agents a special status for a limited period. It provided that if an agent who had never been given formal approval by a particular carrier had, during June 1983 (the month before the notice came into force) received commission directly from that carrier, that agent could continue receiving commission from that carrier until at least 30 September 1983 and, if before 1 October 1983 that agent applied to that carrier for formal approval, until the application succeeded or failed.

The new transitional provision now extends to passenger agents who during June 1983 received commission from a carrier indirectly (for example through a commission-splitting arrangement of which the carrier was unaware); but the special status conferred on any agent will now expire on 1 April 1984 if the agent's application for formal approval has not earlier failed or succeeded.

