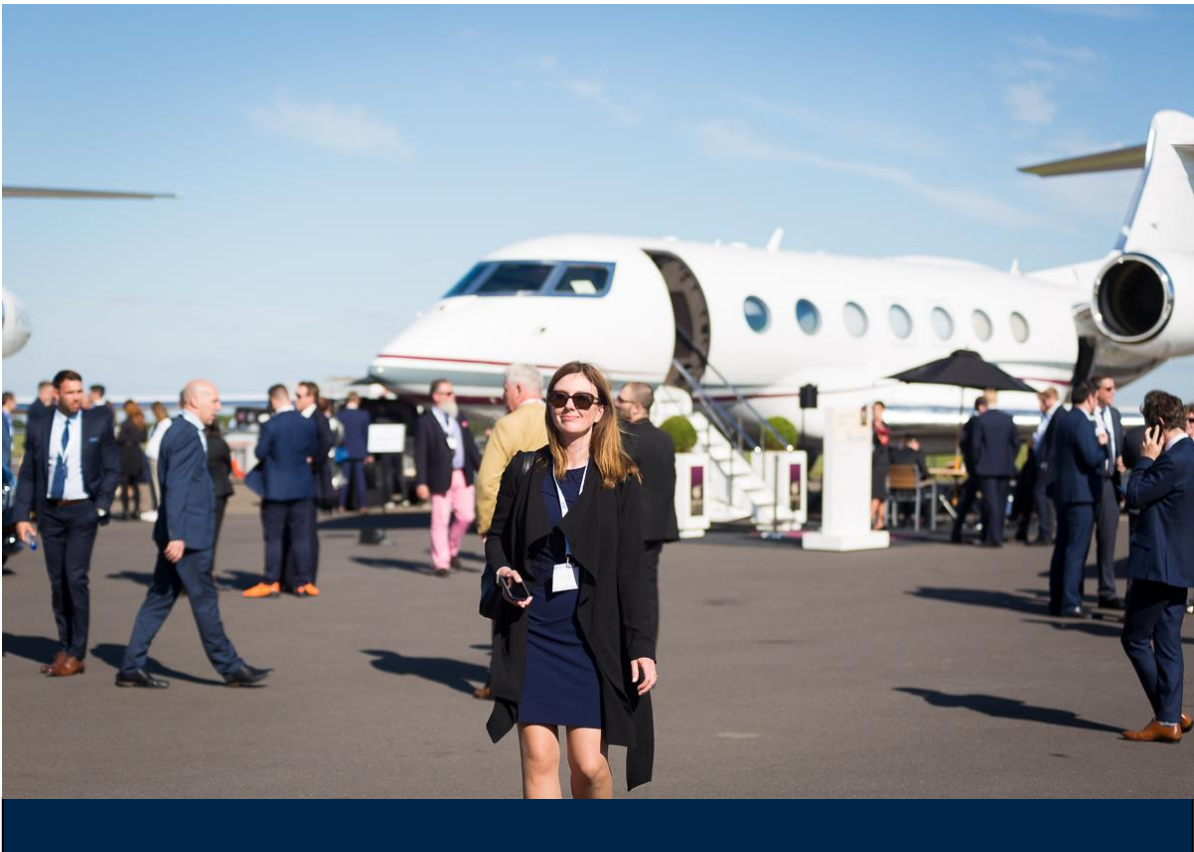


## The ACA Guide

# EU-UK Trade Agreement 2020



## Key Messages

- Permits are now required for ALL Non-Scheduled Charter Flights between the EU and UK. Overflights will not require permits.
- Operators MUST hold Third Country Operator approval.
- 3<sup>rd</sup> and 4<sup>th</sup> Freedom automatically agreed for Passenger Flights.
- Cargo Flight 5th Freedoms can be bi-laterally agreed; Countries now agreed are: France, Luxembourg, The Netherlands (in principle).
- Block Permits available from UK CAA, not currently from any EU Member State.

## 1. Introduction

Following the decision by the United Kingdom to leave the European Union, a trade agreement was agreed on 24<sup>th</sup> December 2020 between the two parties.

This document provides the latest information for Non-Scheduled Charter Operators on the impact of the deal and how The ACA believes operations can continue from 1<sup>st</sup> January 2021. In this dynamic situation, feedback is always welcomed and this document is version numbered and will be updated as additional information comes in.

As the high level agreement is the starting point in negotiations on various areas, particularly aviation, this document makes a number of 'best guesses' at what the reality will be. We advise Operators to speak directly with Aviation Regulators and Transport Directorates to ensure that they are fully compliant. The ACA accepts no responsibility for any losses or damages incurred as a result of the use of this guide.

## 2. Reference Documents

The main agreement text is available here on the UK Government's website:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK Trade and Cooperation Agreement 24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

The same document is available on the EU's website:

[https://ec.europa.eu/info/files/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/files/eu-uk-trade-and-cooperation-agreement_en)

ICAO freedoms of the air:

<https://www.icao.int/pages/freedomsair.aspx>

### 3. What changes?

In short, quite a lot. Although the main positive from the agreement is the mutual recognition of 3<sup>rd</sup> and 4<sup>th</sup> Freedoms of the Air for passenger operations.<sup>1</sup> Specifically that allows:

**“Third Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier.”

**“Fourth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier.

So, for a UK operator that automatically permits passenger flights from the UK to an EU airport and returning to the UK, whether with passengers on all sectors, or just one way.

For an EU operator, that permits a passenger flight from any EU country (the UK have agreed to treat the EU as a bloc, and therefore any EU operator from any Member State can fly from any EU country) to the UK and back to any EU country, either with passengers on all sectors, or just one way.

Positive news for the Cargo operator sector is that the new UK-EU Agreement allows the UK and individual EU Member States to exchange all-cargo 5th Freedom rights formally through bilateral agreements. Where 5<sup>th</sup> Freedoms are agreed:

**“Fifth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State.

This will allow a cargo operator to move cargo with far less restrictions throughout the entire EU and UK.

However, despite that assurance, there **WILL** be a requirement for permits for all flights operating between the EU and UK from 1<sup>st</sup> January onwards. In the case of EU operators, they will need permits from the UK CAA to land, and in the case of UK operators they will need a permit from the Aviation Authority of the EU Member State where they will be landing.

Both sides are understandably seeking to protect their own aviation interests, but in terms of level playing field an EU operator will not be restricted to its own individual country of registry, providing more flexibility for their operation.

Permits for flights under 3<sup>rd</sup> and 4<sup>th</sup> Freedoms must be requested **FOR EVERY FLIGHT**, even though it will be mandatory for them to be granted. Unless there is a valid safety reason, then the permit must be granted, although it is likely that there will now be a lead time, making ‘go now’ charter flights potentially challenging in the short term. We believe, currently at least, overflight permits for the EU or UK will **NOT** be required.

The UK CAA have provided a list of all of the EU Member States Aviation Authority contacts so that Operators can make applications directly:

<https://info.caa.co.uk/media/1044/20201125-memberstatespermitprocessmatrix.xlsx>

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<sup>1</sup> <https://www.icao.int/pages/freedomsair.aspx>

For flights at 5<sup>th</sup> Freedom and above it will fall on each EU Member State and the UK to decide whether a Non-Scheduled Commercial Flight can take place, and a permit must be requested on **each and every occasion**. It will be within the right of all countries to refuse permits if they believe that there is spare capacity within their own country to provide the commercial service. This obviously has the potential to significantly impact UK operators, as they lose automatic rights to fly between the EU Member States.

The UK CAA is offering a Block Permit for EU Non-Scheduled Charter Operators, to allow them to access the UK without having to request approval on each occasion. As yet, sadly, no EU Member State is offering a similar system for UK operators. We have urged the UK Department for Transport to focus on this with their EU counterparts to try and remove the permit requirements in favour of reciprocal traffic rights, this will take time but we understand all sides are keen to see this happen.

## 4. Third Country Operator Approval

Initially, there was a view that TCO Approval would no longer be required given the mutual acceptance of Safety Standards in the Trade Agreement. Sadly, that has now be confirmed to NOT be the case.

Operators in both the EU and UK have been instructed for many months to register for a Third Country Operator Approval – which verifies the Safety Standards of the operator – via the EASA and CAA websites. This is prerequisite for operating in the respective territories and is part of the Permit Application process – **IT MUST BE VALID AND OBTAINED**.

If you have not yet applied, and we urge you do to so immediately here:

For the EU: <https://www.easa.europa.eu/domains/air-operations/tco-third-country-operators>

For the UK: <https://www.caa.co.uk/Commercial-industry/Airlines/Licensing/Requirements-and-guidance/Third-Country-Operator-Certificates/>

The latest information we have is that EASA TCOs will be issued after the 1<sup>st</sup> January, and UK ones before then.

## 5. VAT Free Circulation

We would draw our member's attention to the immediate impact on this issue. There was no specific reference to how VAT Free Circulation status of Aircraft would be dealt with (although clarity is expected in the future) and therefore it must be assumed that Aircraft imported through the UK will now unlikely to be recognised as imported by the EU, likewise an Aircraft imported through the EU now is potentially unlikely to be recognised as imported for Free Circulation within the UK.

The UK Tax Authorities have slowly begun to drip feed some information into the public domain, including positions on Returned Goods Relief and Temporary Admission, but as this is a very detailed area we urge you to seek professional tax advice on this prior to operating Non-Scheduled flights within the EU, if you are a UK operator, or within the UK if you are an EU operator.

## 6. Existing Agreements

Members have asked for clarity on the 1956 Paris Agreement and the recognition of the Chicago Conventions with respect to the Trade Agreement. At present, both sides acknowledge that those agreements remain applicable to

all aviation operations which does provide some ability for operators to secure easier permit processes with specific EU Member States and the UK, however these legal arguments are beyond the scope of this document, though will continue in the background, and will become relevant in the next phase of negotiations on permits and potential reciprocal systems.

## 7. Actions

### Key notes:

1. All flights between the EU and UK now require permits.
2. 3<sup>rd</sup> and 4<sup>th</sup> Freedom Passenger Flights should be automatically approved.
3. 5<sup>th</sup> Freedom All-Cargo Flights should be automatically approved.
4. Anything above those require specific permit approvals from the specific Member State and UK.
5. A Third Country Operator Approval MUST be held by the Operator.

## 8. Conclusion

The ACA is pleased that a deal was reached, it sets the future path to a successful relationship between both sides. It is perhaps not entirely the level playing field we had all hoped we would see for the aviation industry which transcends borders, but we hope that in the course of the next few months more good news will be forthcoming.

We encourage members to inform us of issues you face in the coming weeks so that we can take them directly to the UK Department for Transport or the appropriate Member State aviation authority to try and help them.

Likewise, we would be very grateful for any feedback on the processes you're following so we can work to try and make them more user-friendly during the company months as further negotiations take place.

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