

Safety and Airspace Regulation Group Flight Operations



24 August 2023

Dear Colleague

The UK CAA continues to get feedback via various safety forums that the use of Commander's Discretion ('CD') is being inconsistently interpreted by industry stakeholders, leading to inappropriate application (or the perception of inappropriate application) of CD.

This letter is designed to provide clarity to operators regarding the application of CD and the CAA expectations for operator management systems for clear policies covering CD, including effective monitoring of its application, in keeping with the intent of the requirements as set out in UK (EU) Regulation 965/2012, Annex III, SubPart FCL, Section 2, Part ORO.FTL.205. Although the use of Part ORO.FTL references are used, the same principles underly CAP371 operators. Based on the feedback the CAA has received over the last year, it seems that the overall intent of the regulation and associated guidance material is poorly understood and by this letter, we are asking you to ensure your company documentation has clear policies on the use of CD and (most importantly) all key stakeholders understand them. To assist in this, we provide below some key areas of consideration for both the commander and the operator.

Commanders Requirements and Considerations

Safety should always be the overriding consideration when assessing the potential to extend any planned flight duty period. CD is only ever the Commanders to use; in considering the appropriateness of any use of CD the Commander should have reference to, and follow, the operator's CD policy. It is not possible (or necessarily helpful) to list specific situations that might result in a requirement to consider CD. The Commander considerations broadly fall into two categories:

1) Can I use CD and what are the limitations?

The Commander should follow the operator's CD policy to confirm that the proposed extension of flight duty is permissible for the duty in question. The policy should also require the Commander to confirm (either directly with crew member or via the Operators management systems) that all crew members required for the proposed operation are assessed for compliance with the operator FTL scheme.

In determining the use of CD, the Commander must ensure that the amount of any planned duty extension does not exceed that which the Commander is authorised to exercise.

2) Should I use CD and what are the considerations?

Having determined that CD may be considered, the Commander must assess if it is appropriate. Guidance for this should be in the operators' CD policy (which should include those items specified in AMC1 ORO.FTL.205(f)). It is an individual crew

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member's responsibility to consider whether they are personally fit to operate; it is the Commander's decision as to whether they accept that judgement for both an individual crew member, and collective crew, basis.

Operator Requirements and Considerations

The operator is responsible, as part of its approved FTL scheme, for an appropriate CD policy. The Commander is responsible for the decision to exercise CD, the operator must ensure that this decision can be made without commercial pressure or any perception of individual consequence. Notwithstanding this, if the operator becomes aware that a flight is at risk of exceeding the maximum allowable flight duty extension, they have a responsibility to intervene and if necessary co-ordinate with the Commander to find a solution that prevents maximum allowable CD from being exceeded. The operator's own CD policy should ensure that all 'foreseen' events are included in flight time extension considerations, to avoid putting an airborne crew in the position of either completing the flight (but exceeding maximum CD flight time extension) or diverting to an undesirable alternate (weather, facilities etc) enroute.

Operators should assess on a regular basis the impact of a series of crew pairings where the CD policy has been used to extend planned flight duty periods, in accordance with ORO.FTL.110(j), and provide mitigations where applicable.

It is reasonable for an operator to ask the Commander if they are prepared to extend the maximum planned duty period as defined within the operator's CD policy as part of managing on the day disruption, and to work with them to make flight plan adjustments, if necessary, to continue with operations.

▪ CAA interpretation of 'Unforeseen Circumstances' (ORO.FTL.205(f))

Unforeseen circumstances are events on the day of operation that could not reasonably have been predicted and accommodated when the flight duty period was planned, such as adverse weather, equipment malfunction or air traffic delay. These events may result in necessary on-the-day operational adjustments that the operator could reasonably present to the operating Commander on or after report time. This is very similar to the ICAO definition.

There should be no expectation that Commanders should, or will, agree to extend the maximum planned flight duty period (as defined in the operator's approved FTL scheme and CD Policy) for events that occur before the crew report for the affected FDP. The Commander must have access to the latest information, including the ability to determine crew condition, to exercise their judgement. This can only practically be assured at report time or during the FDP. Notwithstanding this, operators are expected to have a delay policy that is effective in protecting crew where possible from extended duties when delays are known about in sufficient time.

A crew member cannot commit to an extended maximum duty day (using the operators' CD policy) prior to the Commander's report.

The operational consequences of the Commander considering it inappropriate to extend the crew duty period after report, including the possibility of a night-stop down-route, has to be accepted and no commercial pressure can be applied at any stage.

- **CAA interpretation of use of CD at 'home base' (AMC1 ORO.FTL.205(f))**

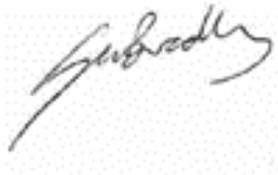
The application of the operator's CD policy at home base may be utilised if considered acceptable by the Commander and the operator in respect of minimising fatigue risk for all crew members who would otherwise be affected (including a replacement crew called from standby and the return sector crew in long-haul operations). However, due consideration within the Operators CD policy should also be made to AMC1 ORO.FTL.205(f), which refers to CD being considered as 'exceptional' and assumes standby or reserve crew members will be available.

- **CD Policy Requirements**

The operator's CD policy must provide support for the Commander to assess the different operational circumstances applicable to the FDP they are going to undertake. It should assist the Commander to determine whether or not to extend or to reduce the allowable FDP, and when reducing or extending rest periods might be appropriate. The CD policy and its intent should be clear to all relevant organisation staff, not just the aircraft commanders (ie., all flight and cabin crew, OCC, relevant line managers, etc). The operator is also required, under the regulation, to implement a non-punitive process for the use of the CD and must have this clearly described in a policy that is accessible to the crew members.

The CAA intends to review existing FTL regulation/amc/gm over the next 24 months as part of its continuous review programme, which will include those areas pertinent to CD.

Yours sincerely



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