

CONSULTATION DRAFT

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STATUTORY INSTRUMENTS

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**2011 No. XXXX**

**TRANSPORT**

**The Airport Charges Regulations 2011**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*\*\*2011  
*Coming into force* [1 September] 2011

The Secretary of State being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to air transport, in exercise of the powers conferred by that section makes the following Regulations:

**PART 1**  
**PRELIMINARY**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Airport Charges Regulations 2011 and come into force on [1 September] 2011.

(2) A provision of these Regulations which amends, applies or otherwise modifies an enactment or subordinate legislation has the same extent as that enactment or subordinate legislation.

**Duty to review**

2.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of the provisions of these Regulations other than the provisions inserted by Parts 7 and 8 of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Airport Charges Directive (which is implemented by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

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(a) S.I. 1993/2661.

(b) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 and section 3 of the European Union (Amendment) Act 2008 (c. 7).

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations, and
- (b) assess the extent to which those objectives have been achieved.
- (4) “Review period” means—
  - (a) the period of five years beginning with the day on which these Regulations come into force, and
  - (b) subject to paragraph (5), each successive period of five years.
- (5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

### Interpretation

3.—(1) In these Regulations—

“the 1986 Act” means the Airports Act 1986(a);

“the 1994 Order” means the Airports (Northern Ireland) Order 1994(b);

“airport” means the aggregate of the land, buildings and works comprised in an aerodrome within the meaning of the Civil Aviation Act 1982(c);

“airport charges” means, in relation to an airport, charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at the airport (including charges that are to any extent determined by reference to the number of passengers on board the aircraft) but excluding excepted charges (see paragraph (2));

“the Airport Charges Directive” means Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges(d);

“airport operator” means the person for the time being having the management of an airport or, in relation to a particular airport, the management of that airport;

“airport user” means, in relation to any airport, a person responsible for the carriage of passengers, mail or freight by air to or from the airport;

“the CAA” means the Civil Aviation Authority;

“Eurostat” means the statistical office of the European Union;

“operator”, in relation to an aircraft, means the person for the time being having management of the aircraft;

“a passenger movement” has the same meaning as in the Airport Charges Directive;

“regulated airport” has the meaning given in regulation 4;

“regulated airport operator” means a person for the time being having the management of a regulated airport or, in relation to a particular regulated airport, the management of that airport;

“year” means a calendar year.

(2) For the purposes of the definition of “airport charges”, excepted charges are —

- (a) penalties payable by virtue of section 38C(e) of the Civil Aviation Act 1982 (breach of noise control scheme);
- (b) penalties payable by virtue of section 78A(f) of the Civil Aviation Act 1982 (penalty schemes established by managers of aerodromes);

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(a) 1986 c. 31.

(b) S.I. 1994/426 (N.I. 1).

(c) 1982 c. 16.

(d) OJ L 70, 14.03.09, p.11.

(e) Sections 38A to 38C were inserted by the Civil Aviation Act 2006 (c. 34), s. 4.

(f) Section 78A was inserted by the Civil Aviation Act 2006, s. 3.

- (c) charges payable for services provided for airport users as described in the Annex to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports(a);
- (d) charges payable by virtue of section 73 of the Transport Act 2000(b) (charges for chargeable air services);
- (e) charges referred to in Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 which are levied for the funding of assistance to disabled passengers and passengers with reduced mobility(c); and
- (f) charges for en route and terminal air navigation services determined in accordance with Chapter III of Commission Regulation (EC) No. 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services(d), as amended by Commission Regulation (EU) No. 1191/2010 of 16th December 2010(e).

## PART 2

### Regulated airports

#### Regulated airports

4.—(1) An airport is a regulated airport during a year if more than five million passenger movements took place at the airport in the year but one preceding that year.

(2) The fact that an airport ceases to be a regulated airport does not affect any rights or liabilities accruing by virtue of these Regulations before the airport ceased to be such an airport.

#### Reporting

5.—(1) An airport operator in relation to an airport must inform the CAA in writing of the number of passenger movements at the airport during a year if—

- (a) the airport was a regulated airport during that year, or
- (b) the CAA has given notice that this regulation applies in relation to that airport and that year.

(2) The airport operator must comply with paragraph (1) before 1 February in the following year.

(3) Notice under paragraph (1)(b) in relation to an airport must be given to the person who is for the time being the airport operator in relation to the airport.

(4) The CAA may not give notice under paragraph (1)(b)—

- (a) in relation to 2010, after [15 September] 2011, or
- (b) in relation to any other year, after 30 November in that year.

(5) The CAA may not give a notice under paragraph (1)(b) in relation to an airport and a year unless it considers that, during at least one of the three years following that year, more than five million passenger movements may take place at that airport.

(6) Subsections (3) and (4) of section 73 of the 1986 Act (offences of failing to furnish information and furnishing false information) have effect in relation to a requirement under paragraph (1) as if it were a requirement of a notice under subsection (1) of that section.

(7) Paragraphs (3) and (4) of Article 48 of the 1994 Order (offences of failing to furnish information and furnishing false information) have effect in relation to a requirement under paragraph (1) as if it were a requirement of a notice under paragraph (1) of that Article.

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(a) OJ L 27, 25.10.96, p. 36.  
 (b) 2000 c. 38.  
 (c) OJ L 204, 26.07.06, p. 1.  
 (d) OJ L 341, 07.12.06, p. 3.  
 (e) OJ L 33, 17.12.10, p. 6.

## **Publication**

6.—(1) The CAA must publish by [30 September 2011] or as soon as practicable after that date a list of the airports which it considers are regulated airports during 2011.

(2) The CAA must publish by [30 September] 2011 or as soon as practicable after that date a list of the airports which it considers will be regulated airports in 2012.

(3) The CAA must by 1st March of each year or as soon after as practicable publish a list of the airports which it considers will be regulated airports the following year.

(4) Where there is an apparent inconsistency between information provided under regulation 5 and the most recent relevant figures produced by Eurostat, the CAA must require such additional information from an airport operator as it sees fit in order to produce or amend any such list.

## **PART 3**

### **Consultation about airport charges and services**

#### **Advance information from airport users**

7.—(1) A regulated airport operator must give a notice to all airport users in relation to the regulated airport it manages each year in accordance with this regulation.

(2) A notice must require the airport user to provide the following information to the regulated airport operator within a period specified in the notice of not less than 30 days beginning with the day on which the airport user receives the notice—

- (a) forecasts as regards its traffic at the airport,
- (b) forecasts as to the composition and envisaged use of its fleet at the airport,
- (c) its development projects at the airport, and
- (d) its requirements at the airport.

(3) A notice must invite the airport user to make representations or provide any other information to the regulated airport operator as to the system or level of airport charges and the associated quality of service.

(4) On receipt of a notice under paragraph (1) an airport user must provide to the regulated airport operator the information required under paragraph (2) in so far as is relevant to it.

#### **Annual consultations**

8.—(1) A regulated airport operator must supply to all airport users in relation to the regulated airport it manages—

- (a) details of its intended future airport charges,
- (b) details of the associated quality of service it intends to provide, and
- (c) information on the components serving as a basis for determining the system or level of all charges proposed, including the matters set out in paragraph (2).

(2) The matters are—

- (a) a list of the various services and infrastructure provided in return for the airport charges levied,
- (b) the methodology used for setting airport charges,
- (c) the overall cost structure of the airport with regard to the facilities and services to which airport charges relate,
- (d) details of the revenue from the different components of airport charges and the total costs of the associated services or facilities,

- (e) any financing provided by a public authority in connection with the facilities and services to which airport charges relate,
  - (f) forecasts for the charges, traffic growth and proposed investments at the airport,
  - (g) the details of the actual use of the airport infrastructure and equipment over at least the previous 12 months, and
  - (h) the predicted outcome of any major proposed investments in terms of their effect on airport capacity.
- (3) A regulated airport operator must fulfil its obligation under paragraph (1) once a year within three months of giving notices to airport users in accordance with regulation 7.
- (4) After supplying information in accordance with paragraph (1) the regulated airport operator must, in so far as practicable, hold consultations with the airport users on its intended future airport charges and the associated quality of service.

### **Proposals to change airport charges**

9.—(1) If a regulated airport operator intends to change the system or level of airport charges or the quality of service associated with an airport charge at an airport that it manages it must give a notice in accordance with this regulation at least four months before the change has effect.

(2) The obligation to give a notice no later than four months before making a change does not arise where there are exceptional circumstances making this not practicable and in such circumstances paragraph (3) applies.

(3) Where this paragraph applies the regulated airport operator must—

- (a) explain the exceptional circumstances to the airport users and the CAA, and
- (b) give a notice in accordance with this regulation as soon as practicable and before the intended changes are made.

(4) A notice under this regulation must be given to each person who is an airport user in relation to the airport.

(5) The notice must—

- (a) identify the time from which the change would have effect, and
- (b) provide information on the components serving as a basis for determining the system or level of airport charges for which a change (including a change to the quality of the associated service) is proposed, including the matters set out in regulation 8(2)(a) and (b).

(6) After giving notices under this regulation the regulated airport operator must, in so far as practicable, hold consultations with the airport users on its intended changes.

(7) The obligations in this regulation may be satisfied as part of or in conjunction with the satisfaction of obligations under regulation 8.

### **Agreements not to require consultation etc.**

10. The obligations under regulations 7 and 8 do not arise in relation to a particular year if in the preceding year this was agreed by the regulated airport operator and all airport users in relation to the airport.

### **Multi-annual agreements**

11.—(1) This regulation applies where the system or level of one or more airport charges (and the associated quality of service) in relation to a regulated airport is determined for more than 12 months by or in accordance with an agreement between the regulated airport operator and all the airport users in relation to that airport (“a multi-annual agreement”).

(2) Subject to paragraph (3), where this regulation applies the obligations which would otherwise arise under this Part do not arise in respect of the system or level of an airport charge

(and the associated quality of service) for as long as they are determined by the multi-annual agreement.

(3) The Secretary of State may direct any regulated airport operator to consult in respect of the system or level of airport charges (or the associated quality of service) at the relevant airport where they are the subject of a multi-annual agreement.

(4) Directions under paragraph (3) may include directions as to the matters to be consulted on and the procedures to be followed.

(5) A regulated airport operator must consult in accordance with any direction given to it under this regulation.

### **Service level agreements**

12.—(1) The obligations under regulations 7 and 8 do not arise in relation to or in respect of an airport user where paragraph (2) applies in the context of negotiations conducted with a view to the conclusion of a service level agreement.

(2) This paragraph applies where a regulated airport operator and an airport user provide information of equivalent detail, and consult each other to an equivalent degree, as they otherwise would have in accordance with regulations 7 and 8.

(3) For the purposes of paragraph (1), a “service level agreement” is an agreement determining the quality of service to be provided by an airport operator which takes into account the actual system or level of airport charges and the quality of service to which airport users are entitled in return for airport charges.

## **PART 4**

### **Setting airport charges and providing differentiated services**

#### **Setting of charges**

13.—(1) Before deciding to continue or change the system or level of airport charges or the associated quality of services at an airport that it manages, a regulated airport operator must have regard to any representations (including objections) made by airport users in accordance with or by virtue of regulations 7 to 9 or in circumstances in which regulation 12(2) applies.

(2) A regulated airport operator must publish details of any change to the system or general level of airport charges or to the associated quality of services provided at an airport that it manages—

- (a) if practicable, before the beginning of the period of two months ending with the day on which the change takes effect, and
- (b) if not, as soon as practicable after the beginning of that period.

(3) Where any airport user gives notice to the relevant regulated airport operator that it objects to any changes proposed, the operator must provide to that person its reasons for disagreeing with views on those changes expressed by way of objection in that notice.

#### **Basis for setting airport charges**

14.—(1) Airport charges set by a regulated airport operator must not discriminate between airport users.

(2) Paragraph (1) does not prevent a regulated airport operator from setting airport charges that differentiate between airport users if it does so for reasons justified in the public and general interest, including reasons related to the environment.

(3) The criteria for any such differentiation must be relevant, objective and transparent.

### **Basis for providing differentiated services**

15.—(1) This regulation applies where a differentiated service cannot be provided to all of the airport users in relation to a regulated airport who notify the regulated airport operator of an interest in using them.

(2) Where this regulation applies, allocation of the differentiated service must be determined by the regulated airport operator on the basis of relevant, objective, transparent and non-discriminatory criteria.

(3) For the purpose of this regulation, where a comparable service or facility is provided at an airport to different airport users but the service or facility provided to one or more of them differs in quality or scope, each different version of the service or facility is a “differentiated service”.

## **PART 5**

### **Penalties for failure by airport users to provide information**

#### **Penalties: failure of airport users to provide information**

16.—(1) The CAA may impose a penalty on a person if it has determined that the person, being an airport user, is in breach of the obligation placed on it by virtue of regulation 7(4).

(2) Before imposing a penalty on a person under paragraph (1) the CAA must—

- (a) give the person a notice about the proposed penalty,
- (b) publish the notice as soon as practicable, and
- (c) (unless the notice is withdrawn) consider any representations made about the proposed penalty in a period of 21 days beginning on the day on which notice is given to the person.

(3) A notice under subsection (1) must —

- (a) state that the CAA proposes to impose a penalty,
- (b) state the proposed amount of the penalty, and
- (c) specify the act or omission which the CAA has determined constitutes a breach of the obligation arising by virtue of regulation 7(4).

(4) Before varying the proposed amount of penalty, the CAA must—

- (a) give the person on whom the penalty is imposed a notice about the proposed variation,
- (b) publish the notice as soon as practicable, and
- (c) (unless the notice is withdrawn) consider any representations made about the proposed penalty in a period of 21 days beginning on the day on which notice is given to the person.

(5) As soon as possible after imposing a penalty under paragraph (1) the CAA must—

- (a) give a notice to the person on whom the penalty is imposed, and
- (b) publish the notice.

(6) The notice under paragraph (5) must—

- (a) state that the CAA has imposed the penalty,
- (b) state the amount of the penalty,
- (c) specify the act or omission which the CAA has determined constitutes a breach of the obligation arising by virtue of regulation 7(4), and
- (d) specify that the penalty is to be paid within 30 days.

### **Review of penalties placed on airport users**

17. Schedule 1 (review of penalties placed on airport users) has effect in respect of the imposition of a penalty by the CAA under regulation 16.

### **Further provision about penalties**

18.—(1) The amount of penalty imposed on a person under regulation 16 or Schedule 1 must be such amount as the CAA determines to be—

- (a) appropriate, and
- (b) proportionate to the breach for which it is imposed.

(2) The maximum amount of penalty that may be imposed on a person under regulation 16 in respect of any breach is £[*see consultation document*].

(3) Paragraphs (4) and (5) apply if all or part of a penalty imposed on a person is not paid within the period specified in the notice given under regulation 16(5) or paragraph 5(1) of Schedule 1.

(4) The CAA may recover from the person as a debt due to the CAA—

- (a) the unpaid balance, and
- (b) any interest on the penalty that has not been paid.

(5) Any sums received by the CAA by way of a penalty under these Regulations must be paid into the Consolidated Fund.

## **PART 6**

### **Breach of obligations by airport operators**

#### **Breach of obligations: duties owed to third parties**

19.—(1) The obligation to comply with any requirement imposed on an airport operator by these Regulations is a duty owed to any person who may be affected by a contravention of that requirement.

(2) Where a duty is owed by virtue of paragraph (1), the following are actionable by a person—

- (a) any breach of the duty which causes that person to sustain loss or damage, and
- (b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result.

#### **Breach of obligations: investigations**

20.—(1) The CAA may investigate whether an airport operator is failing, or has failed, to comply with an obligation imposed on it by or under these Regulations.

(2) The CAA must investigate whether an airport operator is failing to comply or has failed to comply with an obligation imposed on it by or under these Regulations if it receives a complaint about such a failure from a person mentioned in paragraph (3).

(3) Those persons are—

- (a) a person on whom any airport charges have been levied by the airport operator at the airport (whether actually paid by that person or not), or
- (b) another airport operator who claims that the business carried on by him has been or is being materially harmed by the alleged failure to comply with the obligation in question.

(4) Paragraph (2) does not apply if the CAA considers that the complaint is frivolous.

## **Compliance orders**

21.—(1) Paragraph (2) applies if the CAA is satisfied that—

- (a) an airport operator is failing to comply with an obligation imposed on it by or under these Regulations, or
- (b) an airport operator has failed to comply with such an obligation and is likely to do so again.

(2) The CAA may give the airport operator an order requiring it to take the appropriate steps specified in the order.

(3) In paragraph (2) “the appropriate steps”, in relation to a failure to comply with an obligation, mean the steps that the CAA considers appropriate for the purpose of—

- (a) securing compliance with the obligation, and
- (b) remedying any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply with that obligation.

(4) Paragraph (5) applies if the CAA is satisfied that an airport operator has failed to comply with any obligation placed on it by or under these Regulations (but not that he is for the time being failing to comply with it or is likely again to fail to comply with it).

(5) The CAA may give the airport operator an order requiring it to take the appropriate steps in the order for the purpose of remedying any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply with that obligation.

(6) An order under paragraph (2) or (5)—

- (a) must require the airport operator concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of description so specified,
- (b) is to take effect in respect of any requirement (according to the terms of the order) either as soon as a copy of it is served on the airport operator or at such later time as may be specified in it by the CAA, and
- (c) may be revoked by the CAA at any time.

(7) A copy of an order under this regulation shall be served by the CAA on the airport operator.

## **Validity and enforcement of compliance orders**

22.—(1) Section 49 of the 1986 Act (validity and effect of compliance orders) has effect in relation to an order under regulation 21(2) or (5) as if—

- (a) the order were a compliance order under section 48(3)(a) or (5) of that Act, and
- (b) the references in subsections (1) and (2) of that section to section 48 of that Act were references to regulation 21 of these Regulations.

(2) Article 40 of the 1994 Order (validity and effect of compliance orders) has effect in relation to an order under regulation 21(2) or (5) as if—

- (a) the order were a compliance order under Article 39(3)(a) or (5) of that Order, and
- (b) the references in paragraphs (1) and (2) of that article to Article 39 of that Order were references to regulation 21 of these Regulations.

## **PART 7**

### **Designation under the Airports Act 1986 etc.**

## **Examination of competition under the Airports Act 1986**

23.—(1) Part 4 of the 1986 Act (economic regulation of airports) is amended as follows.

- (2) In section 36(1) (interpretation of Part 4)—
- (a) in the definition of “airport charges” for the words from “but excluding” to “1982” substitute “but excluding excepted charges”, and
- (b) in the appropriate place insert—
- ““excepted charges” means—
- (a) penalties payable by virtue of section 38C of the 1982 Act (breach of noise control schemes);
- (b) penalties payable by virtue of section 78A of the 1982 Act (penalty schemes established by managers of aerodromes);
- (c) charges payable for services provided for airport users as described in the Annex to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports;
- (d) charges payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services);
- (e) charges referred to in Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July which are levied for the funding of assistance to disabled passengers and passengers with reduced mobility; and
- (f) charges for en route and terminal air navigation services determined in accordance with Chapter III of Commission Regulation (EC) No. 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services, as amended by Commission Regulation (EU) No. 1191/2010 of 16 December 2010;”.
- (3) In section 40 (mandatory conditions in case of designated airports), in subsection (1), after “State” insert “(either in accordance with section 40A or otherwise)”.
- (4) After that section insert—

**“40A. Designation of certain regulated airports**

- (1) The Secretary of State must by order designate an airport for the purposes of section 40 if—
- (a) it is a regulated airport for the purposes of the Airport Charges Regulations 2011, and
- (b) the Secretary of State considers that designation is warranted on the basis of a market power examination carried out by the CAA in relation to the airport operator in accordance with section 40B.
- (2) The Secretary of State must publish details of the procedure and criteria to be used when deciding whether designation is warranted on that basis.
- (3) The procedure and criteria must be relevant, objective and non-discriminatory.
- (4) As soon as practicable after deciding whether designation of an airport is required under subsection (1), the Secretary of State must—
- (a) publish a notice setting out the reasons for this decision, and
- (b) send a copy of the notice to the airport operator.

**40B. Market power examinations**

- (1) The CAA may, whenever it considers appropriate, examine—
- (a) whether an airport operator in relation to a regulated airport has, or is likely to acquire, substantial market power (whether alone or taken with such other persons as the CAA considers relevant), and
- (b) if so, the nature and extent of that power.
- (2) The CAA must carry out an examination under subsection (1) (a “market power examination”) if it is asked to do so by—
- (a) the Secretary of State,

- (b) a person who appears to the CAA to have a sufficient interest in the examination.
- (3) Subsection (2) does not apply if—
  - (a) the CAA has previously undertaken a market power examination in relation to the airport operator, and
  - (b) it considers that there has not been a material change of circumstances since the conclusion of that examination.
- (4) As soon as practicable after each market power examination the CAA must—
  - (a) publish a report setting out its findings,
  - (b) send a copy of the report to the persons listed in subsection (5).
- (5) Those persons are—
  - (a) the airport operator that is the subject of the examination,
  - (b) the Secretary of State, and
  - (c) if the examination was carried out in response to a request from another person, that person.
- (6) In this section “regulated airport” means an airport which is a regulated airport for the purposes of the Airport Charges Regulations 2011.”

**Transitional provision**

24.—(1) The amendments made by regulation 23(2) do not affect the validity of conditions imposed by the CAA in relation to an airport under Part 4 of the 1986 Act before [1 September] 2011.

(2) But, from that time, references in such conditions to airport charges are to be treated as references to airport charges as defined in section 36(1) of the 1986 Act, as amended by regulation 23(2).

## PART 8

### Designation under the Airports (Northern Ireland) Order 1994 etc.

25.—(1) Part 4 of The Airports (Northern Ireland) Order 1994 is amended as follows.

(2) In Article 27 (interpretation of Part 4)—

(a) in the definition of “airport charges” for the words from “but excluding” to “services etc.” substitute “but excluding excepted charges”, and

(b) in the appropriate place insert—

““excepted charges” means—

- (a) penalties payable by virtue of section 78A of the 1982 Act (penalty schemes established by managers of aerodromes);
- (b) charges payable for services provided for airport users as described in the Annex to the Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports;
- (c) charges payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services);
- (d) charges referred to in Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July which are levied for the funding of assistance to disabled passengers and passengers with reduced mobility; and
- (e) charges for en route and terminal air navigation services determined in accordance with Chapter III of Commission Regulation (EC) No. 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services, as amended by Commission Regulation (EU) No. 1191/2010 of 16 December 2010;”.

(3) In Article 31 (mandatory conditions in case of designated airports), in paragraph (1), after “Department” insert “(either in accordance with Article 31A or otherwise)”.

(4) After that article insert—

**“31A. Designation of certain regulated airports**

(1) The Department must by order designate an airport for the purposes of Article 31 if—

- (a) it is a regulated airport for the purposes of the Airport Charges Regulations 2011, and
- (b) the Department considers that designation is warranted on the basis of a market power examination carried out by the CAA in relation to the airport operator in accordance with Article 31B.

(2) The Secretary of State must publish details of the procedure and criteria to be used when deciding whether designation is warranted on that basis.

(3) The procedure and criteria must be relevant, objective and non-discriminatory.

(4) As soon as practicable after deciding whether designation of an airport is required under paragraph (1), the Department must—

- (a) publish a notice setting out the reasons for this decision, and
- (b) send a copy of the notice to the airport operator.

**31B. Market power examinations**

(1) The CAA may, whenever it considers appropriate, examine—

- (a) whether an airport operator in relation to a regulated airport has, or is likely to acquire, substantial market power (whether alone or taken with such other persons as the CAA considers relevant), and
- (b) if so, the nature and extent of that power.

(2) The CAA must carry out an examination under paragraph (1) (a “market power examination”) if it is asked to do so by—

- (a) the Department,
- (b) a person who appears to the CAA to have a sufficient interest in the examination.

(3) Paragraph (2) does not apply if—

- (a) the CAA has previously undertaken a market power examination in relation to the airport operator, and
- (b) it considers that there has not been a material change of circumstances since the conclusion of that examination.

(4) As soon as practicable after each market power examination the CAA must—

- (a) publish a report setting out its findings,
- (b) send a copy of the report to the persons listed in paragraph (5).

(5) Those persons are—

- (a) the airport operator that is the subject of the examination,
- (b) the Department, and
- (c) if the examination was carried out in respect to a request from another person, that person.

(6) In this Article “regulated airport” means an airport which is a regulated airport for the purposes of the Airport Charges Regulations 2011.”

### **Transitional provision**

**26.—**(1) The amendments made by regulation 25(2) do not affect the validity of conditions imposed by the CAA in relation to an airport under Part 4 of the 1994 Order before [1 September] 2011.

(2) But, from that time, references in such conditions to airport charges are to be treated as references to airport charges as defined in Article 27 of the 1994 Order, as amended by regulation 25(2).

## **PART 9**

### **Miscellaneous**

#### **Consultation on infrastructure plans**

**27.—**(1) This regulation applies in relation to any plans by a regulated airport operator to undertake a major infrastructure project at the airport it manages.

(2) Where this regulation applies, the airport operator must consult airport users in relation to the airport about the plans before they are finalised.

#### **General duties of regulatory body**

**28.—**(1) Section 39(2) and (3) of the 1986 Act (general duties) has effect, subject to paragraph (3), in relation to the performance by the CAA of its functions under these Regulations as it has effect in relation to the performance of its functions under sections 40 to 56 of that Act.

(2) Article 30(2) and (3) of the 1994 Order (general duties) has effect, subject to paragraph (3), in relation to the performance by the CAA of its functions under these Regulations as it has effect in relation to the performance of its functions under the Articles 31 to 49 of that Order.

(3) The CAA must perform the functions under regulations 20 and 21 with a view to ensuring that, to the extent possible, changes to the system or level of airport charges are agreed between regulated airport operators and any airport user who would be liable to pay such charges.

(4) Where it considers it appropriate for the purpose of ensuring that, to the extent possible, such changes are agreed between such persons, the CAA must—

- (a) provide information,
- (b) provide assistance to persons who request it, and
- (c) provide advice (whether or not requested).

(5) The CAA must act impartially and (subject to any obligations of confidentiality) transparently in the exercise of its functions under these Regulations.

#### **Prohibition of management etc of aerodromes by CAA**

**29.—**(1) For section 28 of the Civil Aviation Act 1982 (management of aerodromes by CAA) substitute—

**“28. Prohibition of management etc of aerodromes by CAA**

The CAA may not own, manage or operate an aerodrome.”

(2) Schedule 2 (prohibition of management of aerodromes by CAA: consequential amendments) has effect.

### **Furnishing of information etc to the CAA**

30.—(1) Section 73 of the 1986 Act (furnishing of information etc to CAA) has effect as if the references in subsection (1) to the functions of the CAA under that Act included the functions of the CAA under these Regulations.

(2) Article 48 of the 1994 Order (furnishing of information, etc. to CAA) has effect as if the references in paragraph (1) to the functions of the CAA under Part 4 of that Order included the functions of the CAA under these Regulations.

### **Annual report**

31. The CAA must publish an annual report concerning the exercise of its functions under—

- (a) these Regulations,
- (b) section 40B of the 1986 Act as inserted by these Regulations, and
- (c) Article 31B of the 1994 Order as inserted by these Regulations.

### **Service of documents by the CAA**

32.—(1) Anything requiring to be served on any person, or any notice to be given by the CAA, under these Regulations shall be set out in a notice in writing which may be served either:

- (a) by delivering it to that person,
- (b) by leaving it at his proper address, or
- (c) by post.

(2) For the purposes of paragraph (1)—

- (a) where the person is a body corporate the document may be served on the secretary of that body, and
- (b) the proper address of any person shall, in the case of a body corporate, be the registered or principal office of that body or in any other case the last known address of the person to be served.

### **Restriction on the disclosure of information**

33. Schedule 3 (restriction on the disclosure of information) has effect.

### **Supplementary transitional provision**

34. An obligation imposed on an airport operator or airport user by a provision of Part 3 or 4 of these Regulations may be satisfied by action taken before [1 September 2011].

Signatory text

Address  
Date

*Name*  
Minister of State  
Department

## SCHEDULE 1

### Review of penalties placed on airport users

1. A decision to impose a penalty under regulation 16 may be made on behalf of the CAA by a CAA employee.
2. If the decision to impose a penalty under regulation 16 is made by a CAA employee then—
  - (1) the person on whom the penalty is imposed may within 14 days of receiving a notice under regulation 16(5) serve on the CAA a request that the decision to impose a penalty be retaken by CAA Members on behalf of the CAA, and
  - (2) the notice given under regulation 16(5) must inform the person to whom it is given of the right to serve a request under sub-paragraph (1).
3. Where a request is served under paragraph 2(1)—
  - (1) the notice served under regulation 16(5) has no further effect, and
  - (2) a decision as to whether or not to impose a penalty in the circumstances of the case must be retaken by at least two CAA Members who were not involved in the original decision taken by the CAA employee.
4. Before taking a decision the CAA Members must consider—
  - (1) any brief supplied by the CAA employee who took the original decision, and
  - (2) any representations by the person requesting the decision to be retaken, served on the CAA within 21 days of receiving a notice under regulation 16(5) or such additional period as the CAA Members may determine.
5. When the CAA makes a decision under this Schedule it must—
  - (1) give a notice setting out the decision and a statement of its reasons for that decision to the person who requested the original decision to be retaken, and
  - (2) publish the decision and the statement of its reasons for the decision.
6. If the decision is to impose a penalty then the notice under paragraph 5(1) must specify that the penalty is to be paid within 30 days.
7. For the purposes of this Schedule, “CAA Member” means a member of the CAA appointed by the Secretary of State under section 2 of the Civil Aviation Act 1982.

## SCHEDULE 2

## Prohibition of management of aerodromes by CAA: consequential amendments

*Civil Aviation Act 1982*

- 1.—(1) The Civil Aviation Act 1982(a) is amended as follows.
- (2) In section 3(b) (functions of CAA) omit “, the operation of aerodromes”.
- (3) In section 23(6) (disclosure of information) omit “section 36 (so far only as it relates to aerodromes owned or managed by the CAA)”.
- (4) In the heading of section 36 (health control at certain aerodromes) omit “and aerodromes of CAA”.
- (5) In subsection (1) of that section—
- (a) in paragraph (a) omit “or at any aerodrome in the United Kingdom which is owned or managed by the CAA”, and
- (b) omit the words following paragraph (b).
- (6) In section 45 (power to restrict use of land for purpose of securing safety at aerodromes)—
- (a) in subsection (1) omit “or at any aerodrome in the United Kingdom owned or managed by the CAA”, and
- (b) in subsection (7) omit the words following paragraph (b).
- (7) In section 53(b) (compensation in respect of planning decisions relating to safety of aerodromes)—
- (a) omit subsections (1)(b)(i) and (ii),
- (b) in subsection (3) for “subsection (1)(b)(i) to (iii)” substitute “subsection (1)(b)(iii)”, and
- (c) omit subsection (10)(a) (and the “and” following it).
- (8) In section 55(7)(b) (registration of orders under Part 2), for sub-paragraphs (i) and (ii) substitute “, the Secretary of State”.
- (9) In Schedule 7 (provisions relating to certain orders under Part 2), in paragraph 5(2)(a), omit “or in the case of an order under section 45 of this Act made in respect of an aerodrome owned or managed by the CAA”.
- (10) In Schedule 8 (provisions relating to orders under section 45)—
- (a) in paragraph 1, omit sub-paragraph (b) (and the “and” before it), and
- (b) in paragraph 3, omit sub-paragraph (b) (and the “and” before it).

*Public Health (Control of Disease) Act 1984*

2. In section 14(1) of the Public Health (Control of Disease) Act 1984(c) (application to aerodromes of power to make regulations for control of certain diseases)—
- (1) omit “, and in relation to aerodromes owned or managed by the Civil Aviation Authority”, and
- (2) in paragraph (b) omit “and aerodromes owned or managed by the Civil Aviation Authority”.

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(a) 1982 c. 16.

(b) Relevant amendments were made to section 53 by section 36 of, and paragraph 11 of Schedule 4 to, the Transport Act 2000 (c. 38).

(c) 1984 c. 22; section 14 was amended by section 83(5) of, and Schedule 6 to, the Airports Act 1986 (c. 31).

*Building Act 1984*

3.—(1) The Building Act 1984(a) is amended as follows.

(2) In section 4(1)(b)(ii)(b) (exemption of educational buildings and buildings of statutory undertakers) omit the words from “or in the case of” to “the Authority”.

(3) In section 59(4)(b)(c) (drainage of buildings) omit the words from “or in the case of” to “the Authority”.

*The 1986 Act*

4.—(1) The 1986 Act is amended as follows.

(2) In section 37(4) (airports subject to economic regulation: requirement for permission to levy airport charges) omit paragraph (b) (but not the “or” following it).

(3) In section 57(1) (scope of Part 5: status of certain airport operators as statutory undertakers) omit paragraph (b) (and the “and” before it).

*The 1994 Order*

5.—(1) The 1994 Order is amended as follows.

(2) In article 7(1) (power to obtain rights over land) omit sub-paragraph (c) (and the “and” before it).

(3) In article 10(1) (power to stop up and divert roads) omit sub-paragraph (c) (and the “and” before it).

(4) In article 25 (status of certain airport operators as statutory undertakers) omit sub-paragraph (c) (and the “and” before it).

(5) In article 28(4) (airports subject to economic regulation: requirement for permission to levy airport charges) omit sub-paragraph (b) (but not the “or” following it).

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(a) 1984 c. 55.

(b) Section 4(1)(b) was amended by section 83(5) of, and Schedule 6 to, the Airports Act 1986 (c. 31). Section 4 will be repealed on the coming into force of the Schedule to the Sustainable and Secure Buildings Act 2004 (c. 22).

(c) Section 59(4)(b) was amended by section 83(5) of, and Schedule 6 to, the Airports Act 1986. Subsection 4 will be repealed on the coming into force of the Schedule to the Sustainable and Secure Buildings Act 2004.

## SCHEDULE 3

### Restriction on the disclosure of information

#### *The 1986 Act*

1. Section 74 of the 1986 Act (restriction on disclosure of information) has effect in relation to information obtained under or by virtue of these Regulations as it has effect in relation to information obtained under or by virtue of the 1986 Act.

2. In subsection (3)(a) of that section at the end insert—

“(w) the Airport Charges Regulations 2011.”

#### *The 1994 Order*

3. Article 49 of the 1994 Order (restriction on disclosure of information) has effect in relation to information obtained under or by virtue of these Regulations as it has effect in relation to information obtained under or by virtue of the 1994 Order.

4. In paragraph (3)(b) of that article at the end insert—

“(x) the Airport Charges Regulations 2011.”

#### *Transport Act 2000*

5. In paragraph 3(3) of Schedule 9 to the Transport Act 2000(e) (restrictions on disclosure of information), after paragraph (rd) insert—

“(re) the Airport Charges Regulations 2011;”.

#### *Enterprise Act 2002*

6. In Schedule 15 to the Enterprise Act 2002(d) (enactments conferring functions in relation to which a public authority may disclose information), at the end insert—

“Airport Charges Regulations 2011.”

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- (a) There are various amendments to section 74(3) of the 1986 Act, none of which are relevant to the effect of these Regulations.
  - (b) There are various amendments to Article 49(3) of the 1994 Order, none of which are relevant to the effect of these Regulations.
  - (c) 2000 c. 38. There are various amendments to paragraph 3(3) of Schedule 9 to that Act, none of which are relevant to the effect of these Regulations.
  - (d) 2002 c. 40.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Directive 2009/12/EC of the European Parliament and of the Council of the European Union of 11th March 2009 on airport charges (“the Airport Charges Directive”).

Part 1 contains preliminary provisions. Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations (but not the provisions inserted by Parts 7 and 8) and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke or amend the Regulations.

Part 2 includes provision to establish which are the “regulated airports”, being those airports in respect of which these Regulations are primarily relevant.

Part 3 sets out a framework and a timetable for the provision of information by and between those who manage regulated airports (“regulated airport operators”) and those persons, such as airlines, who are responsible for the carriage of passengers, mail or freight by air to or from the airport. Regulation 8 imposes a requirement on regulated airport operators to hold consultations annually on its airport charges and the associated quality of services provided. Regulation 9 imposes an obligation on a regulated airport operator to hold consultations on the same matters when it proposes a change to charges or services. These consultation obligations may be satisfied simultaneously. Regulations 10 to 12 contain exceptions from the obligations to provide information and consult which would otherwise arise under Part 3.

Part 4 contains rules relating to the process of and basis for setting airport charges. Regulation 15 provides the basis for allocating services and facilities for which there is more demand than can be supplied.

Part 5, with Schedule 1, provides for the imposition of penalties by the CAA for failures by airport users to provide information which relates to the process of annual consultation on airport charges.

Part 6 contains provision relating to the breach and enforcement of obligations placed on airport operators by these Regulations. Regulation 21 enables the CAA to require, by way of a compliance order, an airport operator to satisfy obligations placed on it by the Regulations. Regulation 22 has the effect that such orders have an equivalent status to orders which may be imposed by the CAA under existing legislation in relation to the broader economic regulation of airports.

Part 7 provides for a mandatory procedure whereby the CAA examines whether airport operators in Great Britain have substantial market power. The Secretary of State must designate an airport for the purposes of section 40 of the Airports Act 1986 where this is warranted on the basis of the CAA’s examination. An automatic consequence of designation under the 1986 Act is that airport charges are to be determined or capped by the CAA. Part 8 contains equivalent provision for Northern Ireland for which there is separate legislation and where designation decisions are taken by the Department of the Environment.

Part 9 contains miscellaneous provision. The CAA has been nominated as the independent supervisory authority for the purposes of the Airport Charges Directive and in order to provide it with the necessary independence, regulation 29 has the effect that the CAA may not own, operate or manage an airport.

A full regulatory impact assessment of the effect that the instrument will have on the costs of business and the voluntary sector has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Department for Transport, 76 Marsham Street, London SW1P 4DR. Alternatively, a copy is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislative.gov.uk](http://www.legislative.gov.uk).