

## TARGETED CONSULTATION ON THE AIRPORT CHARGES REGULATIONS 2011

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# 1. Introduction

- 1.1 This is a targeted consultation that seeks your views on the proposed transposition of the EU Directive 2009/12/EC on Airport Charges into UK law through a Statutory Instrument.
- 1.2 A copy of the Directive is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:070:0011:0016:EN:PDF>
- 1.3 The rationale for the Airport Charges Directive is that community airports over a certain size should be subject to a common regulatory framework applying to the essential features of airport charges and the way they are set.
- 1.4 Some airports in the European Union may have a dominant position in regional and national markets that is not constrained by competition from other airports. The absence of effective competition may result in these airports charging higher prices, undertaking insufficient investment or providing a low quality of service.
- 1.5 The Directive therefore sets common principles for the levying of airport charges at Community airports. It defines an airport charge as a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services, which are exclusively provided by the airport managing body and which relate to landing, take-off, lighting and parking of aircraft, and the processing of passengers and freight.
- 1.6 The Directive defines airport user as a natural or legal person responsible for the carriage of passengers, mail and/or freight by air to or from the airport concerned. In this document references to “airlines” are used synonymously with references to airport users on the basis that will generally reflect the principal constituency involved in negotiations. However, it should be remembered that “airport users” as a concept goes broader than this.
- 1.7 The Directive requires Member States to nominate an independent authority as their national independent supervisory authority in order to ensure the correct application of the measures taken to comply with this Directive. The UK is proposing this to be the Civil Aviation Authority (CAA). As the UK’s current economic regulator for the airport sector, it is the only realistic candidate for this role.
- 1.8 The Government is keen to gather views from stakeholders about the proposed transposition of the Directive and its effects.
- 1.9 **The deadline for response is 10 June 2011. Please respond by this date to ensure that your views are taken into account.** It is unlikely that the Department will be able to agree to requests to extend the duration of the targeted consultation.

## **2. How to Respond**

2.1 The targeted consultation period began on 21 April 2011 and will run until 10 June 2011. Please ensure that your response reaches us by that date.

2.2 Please send consultation responses to

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Address: Department for Transport  
Zone 1/25  
Great Minster House  
76 Marsham Street  
London  
SW1P 4DR  
Phone number: 020 7944 8706  
Fax number: 020 7944 2192  
Email address: [airport.charges@dft.gsi.gov.uk](mailto:airport.charges@dft.gsi.gov.uk)

2.3 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

2.4 The Department for Transport intends to share responses with the CAA and other government agencies.

2.5 A list of those consulted is attached in Annex A.

## **3. Freedom of Information**

3.1 Information provided in response to this targeted consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

3.2 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

3.3 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

- 3.4 The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## 4. The Current Regulatory System for Airports in the UK

- 4.1 The UK is one of the few member states where legislation is in place to regulate airport charges and there are proposals to update them through the proposed primary legislation<sup>1</sup>.
- 4.2 Airports currently fall under three categories for the purposes of economic regulation. The first category is airports with an annual turnover, for two of three consecutive years, of less than £1 million. These airports are not subject to any sector-specific economic regulation. Secondly, airports with turnover in excess of £1 million, for two out of the previous three years, require permission to levy airport charges<sup>2</sup>. Some of these airports are required to submit financial information to the airport regulator, the Civil Aviation Authority (CAA). In addition the CAA has powers to attach conditions to remedy or prevent certain courses of conduct but otherwise these airports face no active regulation of their airport charges. There are currently over 50 airports with this regulatory status.
- 4.3 Since 1986 the CAA has considered eleven instances where airlines thought an airport was potentially acting uncompetitively. These cases have been resolved without the CAA having to use its powers to impose remedies on airport operators
- 4.4 Thirdly, airports can be designated by the Secretary of State for “price cap regulation” under section 40(1) of the Airports Act 1986<sup>3</sup>. The government’s policy relating to when it will designate airports is set out at:
- <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/adobe/pdf/165220/241483/decisiononproposeddesignati1.pdf>
- 4.5 Currently three airports in the UK (Heathrow, Gatwick and Stansted) are ‘designated’ for the purposes of section 40. At these airports the CAA sets a price cap to limit the amount that can be levied by way of airport charges over a five year period. These airports are also subject to mandatory accounting conditions<sup>4</sup> which provide additional transparency as to the airport operator’s financing.
- 4.6 Manchester Airport was designated for price control until 2008, when the CAA carried out a review and concluded that it did not have substantial market power and therefore did not need to be regulated. The Secretary of State agreed, and de-designated Manchester.

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<sup>1</sup> <http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/>

<sup>2</sup> See section 37 of the Airports Act 1986.

<sup>3</sup> [http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1986/cukpga\\_19860031\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1986/cukpga_19860031_en_1)

<sup>4</sup> See section 40(2) of the 1986 Act.

## 5. Economic Regulation of Airports

- 5.1 The current legislative framework was established over 20 years ago. Since then, there have been major changes in the aviation sector and best practice in economic regulation has moved on. There is general consensus that the current framework is inflexible, no longer fit for purpose and in need of reform.
- 5.2 The Government plans to introduce legislation in the next session to reform the framework for airport economic regulation<sup>5</sup>. These reforms will help improve the quality of service that passengers receive at designated airports and contribute positively to economic growth. They will also strip out unnecessary regulation and support passenger-focused investment in our existing airport infrastructure. More detail on the content of the reforms can be found in the Secretary of State for Transport's Written Ministerial Statement on 21 July 2010<sup>6</sup>.

## 6. The Proposals

- 6.1 The following section sets out how the Government proposes to transpose the Airport Charges Directive (ACD) into a UK-wide Statutory Instrument. We are interested in respondents' views on how we are planning to transpose the Directive and any problems that may arise from that approach.
- 6.2 The ACD seeks 'to establish a common framework regulating the essential features of airport charges and the way they are set.' The Directive will apply to all airports with a throughput of more than 5 million passengers per annum (mppa).
- 6.3 The Directive establishes the following fundamental principles:
  - **Non-Discrimination (Article 3)** – A charging system must not discriminate among carriers or passengers. Non-discrimination is an established principle of Community Law. In this context, we expect that allegations of non-discrimination may be very similar to allegations which could be made under general competition law in the UK. In such circumstances we expect the CAA to apply an approach consistent with competition law, recognising that some forms of price differentiation deliver benefits to competition and consumers.<sup>7</sup> Airports with significant levels of market power can differentiate their charges so long as the criteria are objective and transparent. All airports may vary charges on environmental grounds or in other ways that promote the public interest.

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<sup>5</sup> <http://www.dft.gov.uk/press/speechesstatements/statements/hammond20110303>

<sup>6</sup> <http://www.dft.gov.uk/press/speechesstatements/statements/hammond20100721>

<sup>7</sup> The CAA published in December 2010 a consultation on how this might operate in practice. A copy of this document can be found here: <http://www.caa.co.uk/docs/5/ergdocs/20101207ACDEmergingThinking.pdf>

- **Consultation (Article 6.1, 6.2 & 8)** - Airport managing bodies and airport users must carry out a consultation process on a regular basis. This already takes place at a number of UK airports, although not necessarily in a form compatible with the Directive.
- **Price control (either Article 6.3 and 6.4, or Article 6.5)** – The ACD provides two alternatives which establish or enable prices to be controlled at all or some airports to which the Directive applies. The first alternative is to require the approval of the independent supervisory authority in the event that the airport operator and airline cannot agree on a change to airport charges. Article 6.5 provides a less interventionist alternative to this process which is favoured by the government. This process would be one where the independent supervisory authority (the CAA) examines the market power of airports and, where warranted on the basis of that examination, price controls are imposed on an airport. This concept of intervening only where there is a deficiency in the competitive environment is the cornerstone of both the current UK legislation and the government’s proposal for legislative reform referred to earlier in this document. Accordingly, the government is committed to maintaining this position and giving effect to a regime corresponding to Article 6.5 in preference to one reflecting Articles 6.3 and 6.4.
- **Transparency (Article 7)** - Airport managing bodies must inform airport users what they are being charged for and some of the key facts underpinning those charges. Airport users must provide traffic forecasts, fleet composition and use, development projects and aeronautical requirements.
- **Quality Standards (Article 9)** - Airports and their users can negotiate with a view to concluding service level agreements.
- **Differentiation of Services (Article 10)** - Airports may differentiate charges according to the varying quality and scope of particular services.
- **Independent Supervisory Authority (Article 11)** – Member States shall nominate or establish an independent authority as their national independent supervisory authority in order to ensure the correct application of the measures taken to comply with the Directive.

6.4 In transposing the Directive we have taken a “copy-out” approach wherever appropriate as is consistent with Government policy. However where this approach has not been suitable to properly transpose the Directive the approach has been to be as to be “light-touch”, i.e. to impose as few regulatory burdens, as possible.

- 6.5 The most significant example of this is that we have chosen to take advantage of the “opt-out” in the Directive (Article 6(5)b) which enables Member States with an effective price control regime to avoid the application of the (much more interventionist) processes in Articles 6(3) and (4). But because the opt-out is a description of a rule, rather than a rule itself, we have needed, in transposing the Directive, to provide some clarification and to fit the proposed arrangements with our existing, generally non-interventionist regime. This clarification is necessary to make the legislation meaningful and has been done in a way which gives effect to the policy of proportionate and targeted regulation.
- 6.6 We are also proposing to equate or subsume some definitions in the Directive with established terms in domestic law to avoid regulatory uncertainty and the potential for unintended expansion of our domestic regime.
- 6.7 There are also a number of instances where extra words have been added to provide further clarity to the Regulations. For example the Directive (at Article 7(2)(a)) states that airport users should supply airport managing bodies with ‘forecasts as regards traffic’. In the Statutory Instrument (at Regulation 7(2)(a)) we have confirmed that this means ‘forecasts as regards traffic at the airport.’

### **Part 1: Preliminary (Regulations 1 to 3)**

- 6.8 The Statutory Instrument will – per our current expectation - come into force on 1 September 2011 on a UK-wide basis (If there is any significant change to this then we will advise industry accordingly). It includes amendments to primary legislation in the form of the Airports Act 1986 which extend to Great Britain and also amends the Airports (Northern Ireland) Order 1994 which relates to Northern Ireland.
- 6.9 Regulation 2 (duty to review) requires the Secretary of State to review the Regulations every five years. A further instrument would be needed to revoke or amend the Regulations in light of any such review.
- 6.10 Regulation 3 (interpretation) sets out the definitions used elsewhere in the Regulations and contains terms deriving from the Directive and existing legislation. Table 1 shows the definitions from the ACD and the corresponding terms used in these Regulations.

**Table 1: Definitions**

<b>Directive</b>	<b>Regulations</b>
<p><b>‘airport’</b> means any land area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the</p>	<p><b>‘airport’</b> means the aggregate of the land, buildings and works comprised in an aerodrome within the meaning of the Civil Aviation Act 1982<sup>(8)</sup>.</p>

<sup>(8)</sup> 1982 c. 16.

<b>Directive</b>	<b>Regulations</b>
requirements of aircraft traffic and services, including the installations needed to assist commercial air services.	This is the definition from section 82 of the Airport Act 1986.
<p><b>‘airport managing body’</b></p> <p>means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws, regulations or contracts the administration and management of the airport or airport network infrastructures and the coordination and control of the activities of the different operators present in the airports or airport network concerned.</p>	<p><b>‘airport operator’</b></p> <p>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.</p> <p>This is the definition from section 82 of the Airport Act 1986.</p>
<p><b>‘airport user’</b></p> <p>means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air to or from the airport concerned.</p>	<p><b>‘airport user’</b></p> <p>means, in relation to any airport, a person responsible for the carriage of passengers, mail or freight by air to or from the relevant airport.</p> <p>An airline is a prime example of an airport user.</p>
<p><b>‘airport charge’</b></p> <p>means a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services, which are exclusively provided by the airport managing body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight.</p>	<p><b>‘airport charges’</b></p> <p>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.</p> <p>This definition should be read with the definition of “excluded charges” (see 6.11 below)</p>
<p><b>‘airport network’</b></p> <p>means a group of airports duly designated as such by the Member State and operated by the same airport managing body.</p>	<p>The UK is not taking advantage of provisions in the ACD relating to airport networks therefore the definition is not being transposed.</p>

- 6.11 The Directive also sets out a number of airport charges to which it shall not apply. The exceptions to the definition of “airport charges” (defined as “excepted charges” in Regulation 3(2)) can be explained as follows:
- (a) penalties payable by virtue of section 38C of the Civil Aviation Act 1982 (breach of noise control schemes) – sums paid are not ultimately for the benefit of the airport operator and hence are outside the Directive’s definition of “airport charge”;
  - (b) penalties payable by virtue of section 78A of the Civil Aviation Act 1982 (penalty schemes established by managers of aerodromes) – similarly these are not for the benefit of the airport operator and outside the Directive’s definition of “airport charge”;
  - (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 – these are outside the scope of the Directive per Article 1(4) and understood to be outside the existing definition of “airport charges” in section 36 of the 1986 Act already;
  - (d) charges payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services) – these are not charges for services provided by the airport operator and hence outside the Directive’s definition of “airport charge”;
  - (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 - these are outside the scope of the Directive per Article 1(4) and understood to be outside the existing definition of “airport charges” in section 36 of the 1986 Act;
  - (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 October 2010 – these are outside the scope of the Directive per Article 1(4).

6.12 If an airport operator provides air navigation services to airlines directly then the charges it levies for this will be determined in accordance with Chapter III of the “ANS Regulation”. In such a scenario, there is no need to “double regulate” these charges and they should be outside the definition of “airport charges”. If, by contrast, an airport operator procures air navigation services from a third party and pays the airport operator itself for that service then Chapter III does not determine the charges paid by the operator to the ANS provider (the “ANS charge”). Nor is this ANS charge an “airport charge” since it is not levied on aircraft operators. The ANS charge therefore becomes something akin to an input cost to the business of the airport operator.

- 6.13 As a cost to the airport operator, in such a scenario the cost reflecting the ANS charge should be reflected in the annual consultation requirement (under regulation 8(2)). The transparency requirement in relation to this cost (which is a cost reflecting the procurement of a service) is, however, separate from the requirements in Chapter II of the ANS Regulation which relate to the direct costs of air navigation service provision.
- 6.14 The exception from the definition of airport charges of ground handling charges, terminal air navigation service charges and levies in respect of persons with restricted mobility is merely an explicit statement of the established position relating to the scope of “airport charges” under the Airports Act 1986 which is currently applied.
- 6.15 We therefore believe the ACD definition corresponds to that used in section 36(1) of the Airports Act 1986, if we just use limb (a) of the definition. This is because the ACD speaks in terms of airport charges being levies “paid by the airport users...”, and “airport users” as defined are, the airlines and not their passengers. We have therefore not used limb (b) of the definition in the Airports Act for the general purposes of the Regulations, as limb (b) is concerned with charges levied on aircraft passengers.

*Transitional provision*

- 6.16 The theoretical difference caused by the amendment to the definition of “airport charge” in the Airports Act 1986 (and in the Airports (Northern Ireland) Order 1994) is that charges on airport users by an airport operator for air navigation services provided *directly* by the airport operator (i.e. determined in accordance with Chapter III of the ANS Regulation) are no longer in the scope of the statutory definition of “airport charges”. However, we understand that none of the airports currently designated under section 40 of the 1986 Act provide such services directly, and that there are no discretionary conditions relating to such charges imposed under Part 4 of the 1986 Act (or its Northern Irish counterpart). Therefore there is no practical difference caused by this change.
- 6.17 To reflect the fact that there is no practical change and to avoid any unmeritorious argument that a theoretical change to the definitions has unwanted consequences, we propose Regulations 24 and 26 (Transitional provision). These Regulations confirm (in respect of Britain and Northern Ireland respectively) that the definitional changes do not affect the validity of any conditions relating to economic regulation (including any conditions which may make use of such definitions).

**Question 1: Are you content with the provisions relating to definitions in the proposed regulations, especially those relating to the definition of airport charges?**

## Part 2: Regulated airports (Regulation 4-6)

6.18 These Regulations will apply to any airport with 5 million passenger movements in the year (1 January to 31 December) but one proceeding the current year.

6.19 On an ongoing basis, airports will be obliged (see Regulation 5(2)) to provide before 1 February in a given year their passenger numbers for the previous year to the CAA so that they can publish a list of airports that it considers are above the 5mppa threshold by 1 March each year (Regulation 6(3)). This list does not determine the application of the Regulations but is intended to reflect CAA's understanding of it. Special provision is made in respect of data relating to 2010 and if the CAA requires any additional data we expect that it will ask for it very shortly after the Regulations coming into force (see Regulation 5(4)(a)).

6.20 Table 2 gives an example of how this would work in practice. It shows:

- (i) the period which is the basis for establishing when obligation arises;
- (ii) when the CAA gives notice that (it believes) the airport will be regulated; and
- (iii) the duration of the consequential period of regulation.

**Table 2: Example of how the threshold works**

<b>Period of measurement against the 5m passenger movement threshold</b>	<b>CAA publishing list of application of the regulations</b>	<b>Corresponding period of application of the regulation</b>
2009	Within one month of coming into force	Coming into force – 31 December 2011
2010	Within one month of coming into force	1 January 2012 – 31 December 2012
2011	1 March 2012	1 January 2013 – 31 December 2013

6.21 Our proposed approach is to leave a gap between an airport reaching the 5 million threshold and the Regulations applying. Without this gap, an airport close to the threshold of regulation might not know until very late in or at the end of a year whether its processes in the following year needed to be compliant with the Regulations. We consider this to be undesirable.

- 6.22 The approach set out above illustrates how annual passenger throughput relates to the period of regulation, based on the passenger movements for a single calendar year. This approach could lead to airports dropping in and out of regulation on a regular basis although in the absence of a mechanism where a judgement or a prediction is made about future airport usage this is inevitable to some degree. Coming in and out of regulation would increase uncertainty and possible costs for both airport operators and users.
- 6.23 Table 3 illustrates the passenger numbers at the five UK airports that have crossed the 5mppa threshold since 2005. The numbers in red show years in which the airport is above the 5mppa threshold. Therefore of the five airports in the table that first exceeded the threshold since 2005, only one (Bristol) has remained above for each year since. Whilst Liverpool went above in 2007 before dipping below in 2009 and back above again in 2010. It is expected that a number of these airports will go back above the threshold again in the next few years.
- 6.24 An alternative approach might be to introduce an ‘averaging’ factor when applying the threshold. This could be constructed in the same way as currently done when determining if an airport should be subject to economic regulation under section 37(2) of the Airports Act 1986.
- 6.25 Under this approach an airport would only be captured if annual passenger movements were above the 5mppa threshold in two of the previous three years. On the plus side, such an approach would avoid regulation arising by virtue of a one-off annual return; on the negative side it would be slower to apply regulation (or disapply it) if and when airports increase (or shrink).
- 6.26 An alternative approach would have been to give the CAA additional discretion in the application or disapplication of regulation. However, we feel this would have been undesirable as introducing subjective judgement in an area where forecasting is not reliable with the scope for disagreement that this would have introduced.

**Table 3: Passenger numbers at airports near the 5mppa threshold from 2003 – 2010 (millions)**

<b>Airport</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
BRISTOL	3.89	4.60	<b>5.20</b>	<b>5.71</b>	<b>5.88</b>	<b>6.23</b>	<b>5.62</b>	<b>5.72</b>
NEWCASTLE	3.90	4.71	<b>5.19</b>	<b>5.41</b>	<b>5.62</b>	<b>5.02</b>	4.57	4.34
BELFAST INTERNATIONAL	3.95	4.40	4.82	<b>5.02</b>	<b>5.24</b>	<b>5.22</b>	4.54	4.01
LIVERPOOL	3.18	3.35	4.41	4.96	<b>5.46</b>	<b>5.33</b>	4.88	<b>5.00</b>
EAST MIDLANDS	4.25	4.38	4.18	4.72	<b>5.41</b>	<b>5.62</b>	4.65	4.11

- 6.27 The averaging approach and the single year calculation have potentially different effects.

- 6.28 By way of an example, consider what would have happened in 2009 had the Regulations been in force at the time. In respect of 2009, if passenger movements in 2007 had been the sole criterion to determine if the threshold had been passed (i.e. in keeping with the suggested approach in the draft), then all of the above airports would have been subject to regulation. However, if the rule at that time had been to look to see whether the threshold had been met in respect of any two years out of 2005, 2006 and 2007, then Liverpool and East Midlands would not have been subject to regulation.
- 6.29 By contrast, consider 2011 and the applicability of the Regulations on their coming into force. If passenger movements in 2009 are to be determinative of application of the Regulations then only Bristol will be regulated in and for the rest of this year. However, if an averaging rule were applied then all of the above airports would be subject to regulation from the coming into force of these Regulations for the rest of this year.

**Question 2: Do you have any comments on the explanation and comments set out above?**

**Question 3: Would you prefer airports to qualify for the Regulations to be based on a single year definition or an ‘averaging’ method based on an airport passing the threshold for two of the previous three years?**

### **Part 3: Consultation about airport charges and services (Regulation 7-12)**

- 6.30 Table 4 sets out the framework and timetable for the provision of information by and between those who manage regulated airports and those persons, such as airlines, who are responsible for the carriage of passengers, mail or freight by air to or from the airport. There must be a consultation at least once a year (Article 7(1)) and there must be a consultation whenever there is a proposal to change charges (Article 9(1)). Table 4 is relevant to a consultation which performs both roles which we expect would be the norm (see Regulation 9(7) which confirms that if an airport changes its charges it need not do this as a separate exercise from its annual consultation).
- 6.31 Steps 1-3 form the consultation phase and are covered by Regulations 7 to 9. Steps 4 and 5 involve setting the charges and are covered by Regulation 13 and discussed in the next section (Part 4).

**Table 4: Steps required for consultation and setting charges: combined annual consultation and consultation on change to charges**

<b>Step</b>	<b>Action</b>	<b>Timing and Regulation</b>
1	Airport operator requests advanced information from airport users by giving notice.	To be done annually – see regulation 7(1)
2	Submission of data by airport users to airport operator.	Within period specified by the airport operator (being not less than 30 days - see Regulation 7(2))
3	Commencement of annual consultation, including any proposals for changes for consultation.	At least four months before new charges introduced (Regulation 9(1)) and (as this is an annual consultation) within three months of giving notice to airport users under Step 1. (Regulation 8(3))
4	Publication of details of determined charges.	If practicable, two months before “Day 0” (see Regulation 13(2))
5	Start of new charges – “Day 0”	Any new charges come into effect

6.32 Step 1 - an airport operator requires an airport user to provide the following information within the period of not less than 30 days:

- (i) forecasts as regards its traffic at the airport,
- (ii) forecasts as to the composition and envisaged use of its fleet at the airport,
- (iii) its development projects at the airport; and
- (iv) its requirements at the airport.

6.33 Step 2 - airport users submit response to notice received from the airport operator in step 1 by the date requested.

6.34 Step 3 - at least four months before any proposed change to the system or general level of charges at an airport a regulated operator will give notice of its intended changes and begin a consultation process with airport users.

6.35 If this process is combined with the annual consultation, then the information the information that the airport operator provides shall include at least:

- (i) details of its intended future charges,

- (ii) details of the associated quality of service it intends to provide, (as part of the information on the components serving as a basis for determining the system or level of proposed charges)
- (iii) a list of the various services and infrastructure provided in return for the airport charge levied,
- (iv) the methodology used for setting airport charges,
- (v) the overall cost structure of the airport with regard to the facilities and services to which airport charges relate,
- (vi) details of the revenue from the different components of airport charges and the total costs of the associated services or facilities,
- (vii) any financing provided by the public authority in connection with the facilities and services to which airport charges relate,
- (viii) forecasts for the charges, traffic growth and proposed investments at the airport,
- (ix) the details of the actual use of airport infrastructure and equipment over at the least previous 12 months; and
- (x) the predicted outcome of any major proposed investments in terms of their effect on airport capacity.

6.36 The regulations allow for exceptions (in whole or in part) from the obligations to provide information and to consult on airport charges and services set out above where a “multi-annual agreement” (Regulation 11) or where “service level agreements” (Regulation 12) are reached between airport operators and individual airlines.

6.37 A “multi-annual agreement” is an agreement between an airport operator and all the airport users on where the system or level of one or more charges (and the associated quality of services) is determined for more than 12 months. For example an agreement could be reached that airport charges will increase annually by RPI+1% for a 5 year period. Where all the airport users at an airport have entered into such an agreement then the obligations under Part 3 do not arise in so far as the system or level of charges are determined by that agreement. This is however subject to a residual discretion to require consultation (Regulation 11(3)). Although the Secretary of State does not anticipate the need to exercise this discretion with any regularity, additional consultation could in theory be relevant (e.g.) in respect of airport users wanting to use the airport in question who are not party to the multi-annual agreement.

- 6.38 A “service level agreement” can be reached between an airport operator and airport user. The agreement will determine the quality of service to be provided by an airport operator and the charges to be levied on the airport user. Where, in the course of negotiation of such an agreement, information is provided and consultation takes place which is functionally equivalent to that which would have happened in a formal consultation, then there is no obligation for the parties concerned to fulfil their obligations under regulation 7 and 8 in respect of each other.
- 6.39 Also note that Regulation 10 provides for the annual information gathering and consultation round to be dispensed with if all airport users and the relevant airport operator agree that this should be so.

**Question 4: Do you consider that these regulations reflect accurately and implement appropriately the Directive’s processes and requirements relating to the setting of airport charges? Do you consider that the proposed arrangements are clear and workable? Please give reasons for your answers.**

#### **Part 4: Setting charges and providing services (Regulation 13-15)**

- 6.40 Steps 4 and 5 from Table 4 illustrate the requirement in Regulation 13 (Setting of charges) that airport operators must publish, if practicable, details of any changes to its charges no later than two months before their entry into force. Where there is an objection to any change proposed, the airport operator must provide its reasons for disagreeing with objections expressed (Regulation 13(3)).
- 6.41 An airport operator must not unlawfully discriminate between airlines in its charges but it may differentiate for legitimate reasons if they are relevant, objective and transparent (Regulation 14 (basis for setting airport charges)).
- 6.42 Where differentiated services cannot be offered to all airlines expressing an interest in using them the allocation shall be determined on the basis of relevant, objective, transparent and non-discriminatory criteria. We do not propose to pursue the option (referred to in Article 10 of the ACD) that these criteria be endorsed by the CAA (as independent supervisory authority) as this would produce unnecessary regulatory interference.

#### **Part 5: Penalties for failure by airport users to provide information (Regulation 16 – 18) with Schedule 1**

- 6.43 Where an airport user fails to fulfil an obligation placed on it by virtue of Regulation 7(4) to provide information to a regulated airport operator, the CAA may impose a financial penalty on that user by virtue of Part 5. Table 5 outlines the procedure the CAA will undertake to impose a penalty.

**Table 5: Steps required for imposing a penalty on airport users who fail to provide information**

Step	Action
1	CAA issues a notice to the airport user about the proposed penalty, specifying the amount of the penalty and the breach of the obligation for which it is to be imposed (Regulation 16(2)).
2	Airport user has 21 days to make any response if it wishes (Regulation 16(2)(c)).
3	CAA considers any response. It can: <ul style="list-style-type: none"> <li>a) drop the case,</li> <li>b) vary the level of penalty and start the process again, or</li> <li>c) impose the penalty.</li> </ul>
4	CAA gives notice to the airport user on whom the penalty is imposed and publishes a notice (Regulation 16(5)).
5	The airport user has 30 days to pay the penalty or (if the decision was made by a CAA employee) it may within 14 days make a request that at least two CAA Members (i.e. members of the Authority's Board appointed by the Secretary of State), not involved in the original decision, review the decision to impose a penalty (see Schedule 1, paragraphs 2 and 3). The CAA must publish a notice setting out the decision of its Members and a statement of reasons for that decision (Schedule 1, paragraph 5). If the decision is to uphold the penalty the airport user has 30 days from notice publication to pay the penalty.

6.44 The amount the penalty imposed by the CAA must be:

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

(see Regulation 18(1)).

6.45 The Regulations published with this consultation currently leave unspecified the maximum amount of penalty that may be imposed. Guidance published by the Department for Business, Innovation and Skills suggests a maximum of £5,000 for each instance.

**Question 5: What should the maximum level of fine be that the CAA can impose on airport users for failure to provide information?**

**Question 6: Do you have any observations on how the obligation for an airline to provide information has been transposed?**

## **Part 6: Breach of obligations by airport operator (Regulation 19 – 22)**

- 6.46 Part 6 imposes on an airport operator a duty to affected third parties to comply with any requirement imposed by the Regulations. It also empowers the CAA to secure compliance by airport operators with the requirements of the Regulations and to require the payment of compensation for breaches of the those requirements. The regime is closely modelled on section 48 of the Airports Act 1986, with some small changes to ensure compatibility with the Directive, and the enforcement regime will therefore be familiar to the industry.
- 6.47 Regulation 19 creates an actionable duty owed to a person who may be affected by a contravention of a requirement imposed on an airport operator under these Regulations. This duty is similar in legal structure to the duty to comply with a compliance order found in section 49 of the 1986 Act (and Article 40 of the 1994 Order).
- 6.48 Regulation 20 contains a provision enabling – and in circumstances set out in Regulation 20(2) requiring - the CAA to investigate breaches or alleged breaches of obligations arising under the Regulations.
- 6.49 Regulation 21 establishes a mechanism for the imposition by the CAA of orders requiring an airport operator to take the “appropriate steps” set out in Regulation 21(3). This is similar to the mechanism established under section 48 of the Airport Act 1986 (and Article 39 of the 1994 Order) relating to breaches of obligations imposed under Part 4 of that Act. Given this similarity, Regulation 22 applies provisions which relate to the validity and enforcement of compliance orders under the existing legislation to orders made under Regulation 21. The Department’s motivation is to apply, to the extent relevant, existing processes.

**Question 7: Do you have any concerns about the enforcement regime that is proposed for the purposes of these Regulations?**

## **Part 7: Designation under the Airports Act 1986 (Regulation 23 and 24)**

- 6.50 The Government has decided to give effect to Article 6(5)(b) of the Directive (which is an alternative to reflecting Article 6(3) and (4) of that Directive). Article 6(5)(b) provides that Articles 6(3) and 6(4) need not be applied if:

“there is a mandatory procedure under national law whereby the independent supervisory authority examines, on a regular basis or in response to requests from interested parties, whether such airports are subject to effective competition. Whenever warranted on the basis of such an examination, the Member State shall decide that the airport charges, or their maximum level, shall be determined or approved by the independent supervisory authority. This decision shall apply for as long as is necessary on the basis of the examination conducted by that authority.”

- 6.51 The process of undertaking examinations upon request is favoured over undertaking examinations on a regular basis (an alternative option under Article 6(5)(b)). This is because our Impact Assessment suggests that conducting a review on a regular basis would increase the costs on both industry and the CAA without bringing any additional benefits.
- 6.52 Our transposition will replace the current regulatory norms with an explicit obligation for the CAA to investigate upon request whether an airport has, or is likely to acquire, “substantial market power”. Having “substantial market power” implies that an airport is not subject to effective competition and the only instances of a lack of effective competition with which the Directive is concerned are ones relating to the market position of the airport. The terms “substantial market power” and “not subject to effective competition” can therefore be equated for the purposes of the transposition. Accordingly the investigation by the CAA under a new section 40B of the Airport Act 1986 (as described below) will go to the first criterion<sup>9</sup> currently considered by the Secretary of State as a matter of policy in respect to designation decisions under section 40 of that Act.
- 6.53 Based on the CAA’s investigation the Secretary of State will proceed to consider whether designation for the purposes of section 40 of the 1986 Act (and the consequential application of price controls) is warranted. As a matter of policy, the Secretary of State will, in the context and on the basis of the CAA’s findings, have regard to two other considerations prior to reaching a decision on designation. They are the two remaining criteria which, as a matter of policy, are currently relevant to designation for the purposes of section 40, namely:
- (a) whether domestic and EC competition law are sufficient to address the risk that, absent regulation, the airport would increase and sustain prices profitably above the competitive level or restrict output or quality below the competitive level; and
  - (b) whether designation under section 40 of the Airports Act 1986 would, taking account of the magnitude of the risk identified in (a) and its detrimental effects were it to materialise, deliver additional benefits (i.e. over and above competition law) which exceed the costs and potential adverse effects of such designation (i.e. the incremental benefits are positive).
- 6.54 De-designation will be likely to be appropriate in the event that the CAA concludes on a market power examination that the test relating to substantial market power is no longer met or in the event that the Secretary of State concludes that one of criteria (a) or (b) in 6.53 would cease to apply were the airport to be de-designated.

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<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/adobepdf/165220/241483/decisiononproposeddesignati1.pdf>

6.55 This document is not an invitation for representations about the criteria or other policy considerations that the Secretary of State should apply in exercising a discretion in accordance with section 40A(1)(b). The question of whether designation is “warranted” for these purposes will be dealt with as far as possible consistently with the existing policy on designation.

6.56 The revised process to determine whether an airport in Great Britain should be designated is introduced by Regulation 23. This amends the Airports Act 1986 with the insertion, after section 40, of the following new sections:

40A. Designation of certain regulated airports

40B. Market power examination

6.57 The “market power examination” requires the CAA upon request to undertake an examination as to whether an airport operator in relation to a regulated airport (more than 5mppa) has, or is likely to acquire substantial market power (whether alone or taken with such other persons as the CAA considers relevant) and extent of that power upon request from:

1. the Secretary of State, or
2. a person who appears to the CAA to have a sufficient interest in the examination.

6.58 The CAA is not required to undertake a market power examination if:

- (a) it 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 in circumstances since that examination.

6.59 As soon as practical after each market power examination the CAA will publish a report setting out the findings, sending copies to:

- (a) the airport operator subject to 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.

6.60 Upon receipt of the report the Secretary of State will, if relevant, consider the question of whether or not designation is warranted on the basis of the market power examination carried out by the CAA (new section 40A(1)(b)).

6.61 The Secretary of State must make public any applicable procedures, conditions and criteria to be used when deciding whether designation is warranted; they must be relevant, objective and non-discriminatory.

6.62 After making a decision the Secretary of State will:

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

(see the proposed section 40A(4)).

**Question 8: Do you consider that these requirements comprise a satisfactory means of designating airports for price control for the purposes of the Airports Act 1986? The criteria relating to “whenever warranted” will be dealt with consistently with the existing policy on designation and we are therefore not looking for comments on its criteria.**

6.63 The existing designation policy<sup>10</sup> will continue to apply for all airports with less than 5mppa in relation to designation decisions and process. It will still be possible for airports which are not regulated airports (for the purposes of these Regulations) to be designated for the purposes of section 40. Regulation 23(3) confirms this position by proposing an amendment which recognises that designation can be otherwise than in accordance with new section 40A (described above).

6.64 Regulation 24 is a transitional provision reflecting the fact that the definition of “airport charges” in the Airports Act 1986 will change as a consequence of these Regulations (see 6.16). The only difference from the current usage of this definition is that, in the event that a designated airport operator provides terminal air navigation services directly to airlines then these charges would not be categorised as “airport charges”. Since this is a purely hypothetical change and since the other changes are simply making explicit current practice there is no practical effect to the definitional changes. However Regulation 24 prevents any legal point being taken in respect of this change.

## **Part 8: Designation under the Airports (Northern Ireland) Order 1994 (Regulation 25)**

6.65 For Northern Ireland we are proposing to implement the same policy for the ‘opt out’ clause Article 6(5)(b), as described in paragraphs 6.57 to 6.62 but will need to make amendments to Part 4 of The Airport (Northern Ireland) Order 1994 by inserting, after Article 31, new articles under the headings:

31A. Designation of certain regulated airports

31B. Market power examination

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<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/adobepdf/165220/241483/decisiononproposeddesi gnati1.pdf>

6.66 Regulation 26 has equivalent effect in respect to conditions imposed under Part 4 of the 1994 Order and the definition of “airport charges” as Regulation 24 has in respect of the legislation in Great Britain.

## **Part 9: Miscellaneous (Regulation 27 – 34)**

6.67 Under Regulation 27, an airport operator wishing to undertake a major infrastructure project at the airport it manages must consult airport users in relation to the airport about the plans before they are finalised. We have not defined “major infrastructure project” so there would be a judgement for the airport operator (and in the first instance the CAA) as to how to interpret this term at a working level.

6.68 Regulation 28 applies, subject to paragraph (3), the standard duties (see section 39 of the Airport Act 1986 and Article 30 of the Airport Order 1994) relating to economic regulation to the performance of functions by the CAA under these regulations. This is subject to the obligation, to the extent possible, that the CAA perform specified functions with a view to ensuring agreement about changes to the system or level of airport charges.

6.69 This is an obligation reflecting a principle in the Directive (Article 6(2)) but a principle which, of course, is subject to practical limitations given that – in the absence of designation – there is a discretion to set charges. The duty is relevant to the investigation and enforcement functions in Regulations 20 and 21. In that context the CAA will further the likelihood of agreement by ensuring that there is a transparent and fair process. The CAA’s duty will also apply to a freestanding function to assist, impartially, as set out in more detail in Regulation 28(4).

6.70 The CAA will be nominated as the national independent supervisory authority for the purposes of the Directive. As such, it must act impartially and (subject to any obligations of or necessity for confidentiality) transparently in the exercise of its functions under the Regulations (see Regulation 28(5)).

6.71 Regulation 29 amends the Civil Aviation Act 1982 to prohibit the CAA from owning, managing or operating an aerodrome thus ensuring that it has – in theory as well as practice – the appropriate independence from airport operators. This amendment leads to the various consequential changes set out in Schedule 2.

6.72 By virtue of Regulation 30 the CAA will be required to publish an annual report concerning the exercise of its functions under these Regulations and its new functions relating to market power examinations (i.e. section 40B of the Airport Act 1986 Act and Article 31B of the Airport Order 1994).

6.73 Regulation 33 and Schedule 3 to these Regulations also contain provisions relating to confidential information. The effect of Schedule 3 is to apply the provision on the restriction on disclosure of information currently found in section 74 of the 1986 Act (and Article 49 of the 1994 Order) to information obtained by or under the Regulations. Note that this applies not just to information obtained by the CAA and, in particular, applies to information obtained by airport operators. This means that there will be a general restriction on disclosure on information obtained in respect of a business unless the person carrying out the business consents. This restriction is subject to the permissible reasons for disclosure identified in section 74(2) of the 1986 Act (and Article 49(2) of the 1994 Order).

**Question 9: Are you content with the arrangements that have been made for the CAA to act as the “independent supervisory authority” in the language of the Directive?**

**Question 10: Do you have any comments on the proposed powers and duties of the CAA?**

**Question 11: Are you content with adopting the approach to confidentiality as set out in section 74 of the 1986 Act, in particular are there any additional disclosures of information that an airport might need to make?**

6.74 The final Regulation (Regulation 34) makes it clear that any consultations or other steps commenced before the coming into force of these Regulations can satisfy or count towards the satisfaction of an obligation arising by virtue of these Regulations. By way of an example, if an airport wishes to consult on a change to the level of airport charges it can begin that consultation prior to these Regulations coming into force with the confidence that if those steps would have “counted” towards meeting the obligations in the Regulations it will not be required to repeat such steps.

**Question 12: We would welcome the comments of respondents on any other aspect of the Regulations and their effectiveness in transposing the Airport Charges Directive into UK law.**

## Targeted Consultation Questions

- Question 1: Are you content with the provisions relating to definitions in the proposed regulations, especially those relating to the definition of airport charges?
- Question 2: Do you have any comments on the explanation and comments set out above?
- Question 3: Would you prefer airports to qualify for the Regulations to be based on a single year definition or an 'averaging' method based on an airport passing the threshold for two of the previous three years?
- Question 4: Do you consider that these regulations reflect accurately and implement appropriately the Directive's processes and requirements relating to the setting of airport charges? Do you consider that the proposed arrangements are clear and workable? Please give reasons for your answers.
- Question 5: What should the maximum level of fine be that the CAA can impose on airport users for failure to provide information?
- Question 6: Do you have any observations on how the obligation for an airline to provide information has been transposed?
- Question 7: Do you have any concerns about the enforcement regime that is proposed for the purposes of these Regulations?
- Question 8: Do you consider that these requirements comprise a satisfactory means of designating airports for price control for the purposes of the Airports Act 1986? The criteria relating to "whenever warranted" will be dealt with consistently with the existing policy on designation and we are therefore not looking for comments on its criteria.
- Question 9: Are you content with the arrangements that have been made for the CAA to act as the "independent supervisory authority" in the language of the Directive?
- Question 10: Do you have any comments on the proposed powers and duties of the CAA?
- Question 11: Are you content with adopting the approach to confidentiality as set out in section 74 of the 1986 Act, in particular are there any additional disclosures of information that an airport might need to make?
- Question 12: We would welcome the comments of respondents on any other aspect of the regulations and their effectiveness in transposing the Airport Charges Directive into UK law.

## **Annex A: List of those consulted**

AOA  
BAA  
Belfast City Airport  
Belfast International Airport  
Birmingham Airport  
Bristol Airport  
Cardiff Airport  
Gatwick Airport  
Leeds Bradford Airport  
Liverpool Airport  
London City Airport  
London Luton Airport  
Manchester Airport Group  
Newcastle Airport  
Peel Airports

BAR-UK  
BATA  
ELFAA  
ERAA  
IACA  
IATA  
Air Atlanta Icelandic  
Air Baltic  
Air Berlin  
Air Canada  
Air Contractors  
Air France  
Air Jamaica  
Air Malta  
Air Mauritius  
Air Medical  
Air New Zealand  
Air Seychelles  
Air Transat  
All Nippon Airways  
American Airlines  
Aurigny Air Service  
BMI  
British Airways  
Brussels Airlines  
Cathay Pacific Airways  
Cirrus Airlines  
Condor  
Continental Airlines  
Croatia Airlines  
Cyprus Airways  
Delta Airlines

Dragonair  
Eastern Airways  
Easyjet  
Emirates  
Estonian Air  
Evergreen International Airlines  
Fedex  
Flybe  
Ford  
Global Supply Systems  
Iberia  
Icelandair  
Interflight  
Japan Air Lines  
JAT Airways  
Jet2  
KLM  
Kuwait Airways  
London Air Charter  
Lufthansa  
Luxair  
Malaysia Airlines  
Martinair Holland  
Meridiana  
Middle East Airlines  
MNG Airlines  
Monarch Airlines  
Olympic Air  
Oneworld  
Qantas  
Ryanair  
SAS Scandinavian Airlines  
Saudia  
Singapore Airlines  
South African Airways  
Spanair  
Sri Lanka Airlines  
Star Alliance  
TAP Portugal  
TAROM  
Thomas Cook  
Thomson Airways  
TNT  
Transun  
TUI Travel  
UPS  
US Airways  
United Airlines  
Virgin Atlantic Airlines

AOPA  
BBGA  
BHA  
GAA

Northern Ireland Executive  
Scottish Government  
Welsh Assembly Government

## Annex B: How the Directive will be transposed by the proposed regulations

Requirement (and reference to relevant part of the Directive)	Implementation in the Regulations
<p><b>Article 1 - Scope</b></p> <p>Paragraph 2. This Directive shall apply to any airport located in a territory subject to the Treaty and open to commercial traffic whose annual traffic is over 5 million passenger movements and to the airport with the highest passenger movement in each Member State.</p>	<p>See definition of “regulated airport” in Regulation 4(1) of the Regulations.</p>
<p>Paragraph 3. Member States shall publish a list of the airports on their territory to which this Directive applies. This list shall be based on data from the Commission (EUROSTAT) and shall be updated annually.</p>	<p>See Regulations 6(1) to (3). Consistency with Eurostat data is promoted by virtue of Regulation 6(4).</p>
<p>Paragraph 4. This Directive shall not apply to the charges collected for the remuneration of en route and terminal air navigation services in accordance with Regulation (EC) No 1794/2006, or to charges collected for the remuneration of ground-handling services, referred to in the Annex to Directive 96/97/EC, or to the charges levied for the funding of assistance to disabled passengers and passenger with reduced mobility referred to in Regulation (EC) No 1107/2006.</p>	<p>See the definition of “excepted charges” in Regulation 3(2) and the revision of the definition of “airport charges” in section 36 of the Airports Act 1986 by virtue of Regulation 23(2) (see Regulation 25(2) for the equivalent change in respect of Northern Ireland).</p>
<p>Paragraph 5. The Directive shall be without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body located in its territory. This may include economic oversight measures, such as the approval of charging systems and/or the level of charges including incentive-based charging methods or price cap regulation.</p>	<p>This paragraph does not require direct transposition</p>
<p><b>Article 2 - Definitions</b></p> <p>“airport”</p>	<p>The standard domestic definition of “airport” has been used for consistency and this definition encompasses the terms as used in the Directive.</p>
<p>“airport charges”</p>	<p>Note that the definition of “airport charges” in Regulation 3(1) is similar to paragraph (a) of the definition of “airport charges” in section 36(10) of the Airports Act 1986. The various exceptions to the term are set out separately as “excepted charges”.</p>
<p>“airport user”</p>	<p>This term has been adopted directly.</p>

Requirement (and reference to relevant part of the Directive)	Implementation in the Regulations
"airport managing body"	The standard domestic definition of "airport operator" has been used in the interests of consistency with domestic legislation: this terms encompasses "airport managing body".
"airport network"	This concept is not needed as no use is being made of Article 4 of the Directive.
<p><b>Article 3 - Non-discrimination</b></p> <p>Member States shall ensure that airport charges do not discriminate among airport users, in accordance with Community law. This does not prevent the modulation of airport charges for issues of public and general interest, including environmental issues. The criteria used for such a modulation shall be relevant, objective and transparent.</p>	See Regulation 14(1) (Basis of setting airport charges)
<p><b>Article 4 - Airport network</b></p> <p>Member States may allow the airport managing body of an airport network to introduce a common and transparent airport charging system to cover the airport network.</p>	Optional transposition that the UK proposes not take up.
<p><b>Article 5 - Common charging systems</b></p> <p>After having informed the Commission and in accordance with Community law, Member States may allow an airport managing body to apply a common and transparent charging system at airports serving the same city or conurbation, provided that each airport fully complies with the requirements on transparency set out in Article 7.</p>	Optional transposition that the UK proposes not take up.
<p><b>Article 6 (1) - Consultation</b></p> <p>Member States shall ensure that a compulsory procedure for regular consultation between the airport managing body and airport users or the representatives or associations of airport users is established with respect to the operation of the system of airport charges, the level of airport charges and, as appropriate, the quality of service provided.</p>	Note that no explicit provision is made for consultation with representative groups of airport users; although this does not prevent the involvement of any such groups in this process.
Such consultation shall take place at least once a year, unless agreed otherwise in the latest consultation.	<p>The requirement to consult at least once a year is in Regulation 8(3). This must follow the information gathering exercise under Regulations 7.</p> <p>The meaning of "unless agreed otherwise" is understood to mean "unless agreed otherwise in a</p>

<b>Requirement (and reference to relevant part of the Directive)</b>	<b>Implementation in the Regulations</b>
	multi-annual agreement” – see Regulation 11 which disapplies obligations under Part 3 in certain circumstances.
Where a multi-annual agreement between the airport managing body and the airport users exists, the consultations shall take place as foreseen in such agreement.	See Regulation 11.
Member States shall retain the right to request more frequent consultations.	See Regulation 11(3).
<p><b>Article 6(2) – Timetable for decision</b></p> <p>Member States shall ensure that, wherever possible, changes to the system or the level of airport charges are made in agreement between the airport managing body and the airport users.</p>	See Regulations 28(3) and (4) for the proposed corresponding duty and function on the CAA.
To that end, the airport managing body shall submit any proposal to modify the system or the level of airport charges to the airport users no later than four months before they enter into force, together with the reasons for the proposed changes, unless there are exceptional circumstances which need to be justified to airport users.	<p>Regulation 9(1) provides the obligation to give notice of a proposed change.</p> <p>The potential for “exceptional circumstances” and their justification is reflected in Regulation 9(2) and 9(3).</p>
The airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before a decision is taken.	<p>See Regulation 9 generally and Regulation 9(6) in particular.</p> <p>See Regulation 13(1) which places an obligation on a regulated airport operator to have regard to representations made to it.</p>
The airport managing body shall normally publish its decision or recommendation no later than two months before entry into force.	Regulation 13(2) provides for the decision to be published with two months notice, which normally will be practicable.
The airport managing body shall justify its decision with regard to the views of the airport users in the event that no agreement on the proposed changes is reached between the airport managing body and the airport users.	Regulation 13(3) requires an airport operator to provide its reasons for disagreeing with an airport user which will constitute its justification.

<b>Requirement (and reference to relevant part of the Directive)</b>	<b>Implementation in the Regulations</b>
<p><b>Articles 6(3) and (4) - Appeal</b></p> <p>Member States shall ensure that in the event of a disagreement over a decision on airport charges taken by the airport managing body, either party may seek the intervention of the independent supervisory authority referred to in Article 10 which shall examine the justifications for the modification of the system or the level of airport charges.</p> <p>Paragraph 4. A modification of the level of airport charges decided upon by the airport managing body shall, if brought before the independent supervisory authority, not take effect until that authority has examined the matter. The independent supervisory authority shall, within four weeks of the matter being brought before it, may take an interim decision on the entry into force of the modification of airport charges, unless the final decision can be taken within the same deadline.</p>	<p>These provisions are not necessary to transpose, provided the requirements of Article 6(5)(b) are met.</p>
<p><b>Article 6(5) – Market investigation alternative</b></p> <p>A Member State may decide not to apply paragraphs 3 and 4 in relation to changes to the level of charges or the structure of the airport charges at those airports for which.....:</p>	<p>The decision is the decision to revise section 40 of the Airports Act 1986 and Article 31 of the 1994 Order to conform with the description in Article 6(5)(b). See Parts 7 and 8 which introduce those amendments.</p>
<p>(b) there is a mandatory procedure under national law whereby the authority referred to in article 10 examines on a regular basis or in response to requests from interested parties whether such airports are subject to effective competition.</p>	<p>The examination of competition is found in new section 40B of the 1986 Act inserted by Regulation 23 (and new Article 31B of the 1994 Order inserted by Regulation 25).</p> <p>The prompt for a review of effective competition is when the CAA is asked to do so by an “interested party” being, the Secretary of State (the Department of the Environment in Northern Ireland) or in accordance with section 40B(2)(b) or Article</p>

Requirement (and reference to relevant part of the Directive)	Implementation in the Regulations
	<p>31B(2)(b), someone having a sufficient interest in the determination.</p> <p>An airport is not subject to effective competition if it has substantial market power and the new section 40B and Article 31B provide for the CAA to undertake a “market power examination”.</p>
<p>Whenever warranted on the basis of such examination, the Member State shall decide that the airport charges, or their maximum level, shall be determined or approved by the authority referred to in Article 10.</p>	<p>By virtue of new section 40A(1)(b) (in Northern Ireland Article 31A(1)(b)) the Secretary of State (or the Department of the Environment in Northern Ireland) will address the question of whether designation is warranted.</p> <p>The effects of designation for the purposes of section 40 of the Airports Act 1986 and Article 31 of the 1994 Order include an obligation to impose conditions that the “CAA considers appropriate for regulating the maximum amounts that may be levied by the airport operator by way of airport charges at the airport...” (see section 40(3) of the 1986 Act and Article 31(3) of the 1994 Order).</p>
<p>This decision shall apply for as long as is necessary on the basis of the examination conducted by the same authority.</p>	<p>The decision by the Secretary of State to impose price controls is of indefinite duration. The CAA has a discretion to re-examine the airport operator (i.e. make a further market power examination) when it considers it appropriate to do so and the Secretary of State, and the relevant airport operator, may prompt a further examination by a request in accordance with section 40B or Article 31B. This will mean that the continued application of price controls will be justified by an examination or a finding that a re-examination is not justified.</p>
<p>The procedures, conditions and criteria applied for the purpose of this paragraph by the Member State shall be relevant, objective, non-discriminatory and transparent.</p>	<p>See sections 40A and 40B, and section 40A(2) in particular (in Northern Ireland Articles 31A and 31B and Article 31A(2) in particular). The requirement to publish details of the particular procedure and criteria will provide transparency.</p>
<p><b>Article 7 - Airport transparency</b></p> <p>Member States shall ensure that the airport managing body provides each airport user, or the representatives or associations of airport users, every time consultations referred to in Article 5(1) are to be held with information on the components serving as a basis for determining the level of all charges levied at each airport by the airport managing body.</p> <p>The information shall include at least:  (a) a list of the various services and infrastructure provided in return for the airport</p>	<p>The provision of information under Article 7(1) of the Directive actually follows the receipt of information under Article 7(2) (reflected in Regulation 7 (Advance Information from airport users)).</p> <p>Regulation 8 sets out the information which must be supplied by the airport operator.</p>

<b>Requirement (and reference to relevant part of the Directive)</b>	<b>Implementation in the Regulations</b>
<p>charge levied;            (b) the methodology used for setting airport charges;            (c) the overall cost structure with regard to the facilities and services which airport charges relate to;            (d) the revenue of the different charges and the total cost of the services covered by them;            (e) any financing from public authorities with regard to the facilities and services which airport charges relate to;            (f) forecasts of the situation at the airport as regards the charges, traffic growth and proposed investments;            (g) the actual use of airport infrastructure and equipment over a given period; and            (h) the predicted output of any major proposed investments in terms of their effects on airport capacity.</p>	<p>The “given period” that the Department proposes is 12 months.</p>
<p><b>Article 7(2) - Provision of information by airport users</b></p> <p>Member States shall ensure that airport users submit information to the airport managing body before every consultation, as provided for in Article 5(1), concerning in particular:</p> <p>(a) forecasts as regards traffic;            (b) forecasts as to the composition and envisaged use of their fleet;            (c) their development projects at the airport concerned;            (d) their requirements at the airport concerned.</p>	<p>Regulation 7 establishes what is the first step in a consultation process.</p>
<p><b>Article 7(3) - Confidentiality</b></p> <p>Paragraph 3. Subject to national legislation, the information provided on the basis of this Article shall be considered as confidential or economically sensitive and handled accordingly. In the case of airport managing bodies that are quoted on the stock exchange, stock exchange regulations in particular shall be complied with.</p>	<p>Schedule 3 of the Regulations provides for information to be treated as confidential subject to permitted disclosures.</p>
<p><b>Article 8 - New infrastructure</b></p> <p>Member States shall ensure that the airport managing body consults with airport users before plans for new infrastructure projects are finalised.</p>	<p>Regulation 27 (Consultation on infrastructure plans) gives effect to this obligation.</p>

Requirement (and reference to relevant part of the Directive)	Implementation in the Regulations
<p><b>Article 9 - Quality standards</b></p> <p>In order to ensure smooth and efficient operations at an airport, Member States shall take the necessary measures to allow the airport managing body and the representatives or associations of airport users at the airport to enter into negotiations with a view to concluding a service level agreements with regard to the quality of service provided at the airport. These negotiations on service quality may take place as part of the consultations referred to in Article 5(1).</p>	<p>The potential relevance of service level agreements is acknowledged by Regulation 12.</p> <p>Where the substantive obligations of a consultation take place in the context of a negotiation for a service level agreement between an airport and an airport user, there is no need for the airport operator to conduct a distinct consultation with respect to the airport user concerned (see Regulation 12(1)).</p>
<p>Any such service level agreement shall determine the level of the service to be provided by the airport managing body which takes into account the actual level of airport charges and the level of service to which airport users are entitled in return for airport charges.</p>	<p>See definition of “service level agreement” in Regulation 12(3).</p>
<p><b>Article 10 - Differentiation of services</b></p> <p>Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim of providing tailored services or a dedicated terminal or part of a terminal. The level of airport charges may be differentiated according to the quality and scope of such services and their costs or any other objective and transparent justification. Without prejudice to article 3 on non-discrimination among airport users, airport managing bodies shall remain free to set any such differentiated airport charges.</p>	<p>See Regulation 15 (Basis for providing differentiated services).</p>
<p>Member States shall take the necessary measures to allow any airport user wishing to use the tailored services or dedicated terminal or part of a terminal, to have access to these services and terminal or part of a terminal.</p>	<p>See Regulation 15(1) and (2).</p>
<p>In the event that more airport users wish to have access to the tailored services and/or a dedicated terminal or part of a terminal than is possible due to capacity constraints, access shall be determined on the basis of relevant, objective, transparent and non-discriminatory</p>	<p>See Regulation 15(1) and (2).</p>

<b>Requirement (and reference to relevant part of the Directive)</b>	<b>Implementation in the Regulations</b>
criteria.	
These criteria may be set by the airport managing body and Member States may require these criteria to be endorsed by the independent supervisory authority.	There is no requirement in the Regulations for the criteria, which are to be determined by the airport operator, to be endorsed by the CAA (as independent supervisory authority).
<p><b>Article 11 - Independent supervisory authority</b></p> <p>Member States shall nominate or establish an independent body as their national independent supervisory authority in order to ensure the correct application of the measures taken to comply with this Directive and to assume, at least, the tasks assigned under Article 6. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(5), including with the approval of the charging system and/or the level of airport charges, provided that it meets the requirements of paragraph 2 of this Article.</p>	The CAA will be the UK's independent supervisory authority and the Department will notify the Commission of this administratively.
Paragraph 2. In compliance with national law, this Directive shall not prevent the independent supervisory authority from delegating, under its supervision and full responsibility, the implementation of this Directive to other independent supervisory authorities, provided that implementation takes place in accordance with the same standards.	No transposition is needed for this provision.
Paragraph 3. Member States shall guarantee the independence of the independent supervisory authority by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership of airports, airport managing bodies or air carriers shall ensure that the functions relating to such ownership or control are not vested in the independent supervisory authority. Member States shall ensure that the independent supervisory authority exercises its powers impartially and transparently.	As to independence, see Regulation 29 and the new section 28 of the Civil Aviation Act 1982 which removes to power of the CAA to own, manage or operate aerodromes. There are various consequential amendments related to this change set out in Schedule 2 to the Regulations.
Paragraph 4. Member States shall notify the Commission of the name and address of the independent supervisory authority, its	To be done administratively

<b>Requirement (and reference to relevant part of the Directive)</b>	<b>Implementation in the Regulations</b>
assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.	
Paragraph 5. Member States may establish a funding mechanism for the independent supervisory authority, which may include levying a charge on airport users and airport managing bodies.	A funding mechanism for the CAA already exists and is found in section 11 of the Civil Aviation Act 1982.
Paragraph 6. Member States shall ensure, in respect of disagreements referred to in Article 6(3), that measures are taken to: (a) establish a procedure for resolving disagreements between the airport managing body and the airport users; (b) determine the conditions under which a disagreement may be brought to the independent supervisory authority. The authority shall, in particular, dismiss complaints which it deems are not properly justified or adequately documented; and (c) determine the criteria against which disagreements will be assessed for resolution. These procedures, conditions and criteria shall be non-discriminatory, transparent and objective.	The UK's transposition gives effect to Article 6(5) and not Article 6(3); hence this paragraph is not applicable.
Paragraph 7. When undertaking an investigation into the justification for the modification of the system or the level of airport charges as set out in Article 6, the independent supervisory authority shall have access to necessary information from the parties concerned and shall be required to consult the parties concerned in order to reach its decision. Without prejudice to Article 6(4), it shall issue a final decision as soon as possible, and in any case within four months of the matter being brought before it. This period may be extended by two months in exceptional and duly justified cases. The decisions of the independent supervisory authority shall have binding effect, without prejudice to parliamentary or judicial review, as applicable in the Member States.	See Regulation 30 (Furnishing of information to the CAA etc) which applies provision of the 1986 Act and the 1994 Order so that the CAA has the appropriate information gathering powers.  The UK's transposition gives effect to Article 6(5) and not Article 6(4) and hence references to that Article are not reflected in these Regulations.
Paragraph 8. The independent supervisory authority shall publish an annual report concerning its activities.	See Regulation 31.

<b>Requirement (and reference to relevant part of the Directive)</b>	<b>Implementation in the Regulations</b>
<b>Article 12 - Report and Revision</b>	No transposition necessary.
<p><b>Article 13 - Transposition</b></p> <p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 March 2011. They shall forthwith inform the Commission thereof.</p> <p>... When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such references shall be laid down by Member States.</p>	<p>See the Coming into Force Date.</p> <p>See reference in Explanatory Note and Transposition Note.</p>