

Regulating Air Transport Consultation
Aviation, Regulatory & Consumer Policy
Department for Transport
1/25 Great Minster House
76 Marsham Street
London SW1P 4DR

18 March 2010

Dear Sir/Madam

DFT CONSULTATION ON REGULATING AIR TRANSPORT AND UPDATING THE REGULATORY FRAMEWORK FOR AVIATION

Gatwick Airport has the following comments on the DfT's December 2009 publication 'Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation'.

Giving the CAA a Clear Statutory Focus for the 21st Century

New objectives for the CAA

We note that the DfT has already made separate proposals (in its Decision published in December 2009) for the statutory objectives and duties that will apply to CAA in discharging its functions relating to airport regulation. Given these separate proposals we do not have any comments on the wider objectives and duties for the CAA.

The CAA's consumer role

Q5.5 We agree that the CAA should be given additional concurrent competition law powers over other providers of airport services. This will assist in common standards being applied to the policing of anti-competitive behaviour across the airport services sector.

Q5.6 We accept that funding should come from the airport licensing regime provided that any regulatory arrangements on airport operators allow for the full cost of licence fees to be recovered as an operating expense and provided that the CAA adopts an approach to the recovery of these costs does not distort competition between tier 1 and tier 2 airport operators.

The CAA's environment role and making the proposed objective fit with the CAA's existing functions

Given that the DfT has already made a separate proposal for the environmental objective to apply to the CAA in carrying out its functions relating to airport regulation we have no comments on this wider objective.

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Giving the CAA new information powers

Q9.1 We have a number of concerns about the proposals for information gathering powers for the CAA, including:

- explicit provision should be made to provide an appropriate degree of protection for confidential information and there should be an obligation on the CAA to consult before the releasing any information that might be regarded as confidential and only to release such information when it is essential to do so, and
- the airport only has very limited powers to require airlines to provide information and may not be able to test or verify the accuracy of this information. Therefore, there are very significant practicable barriers to using airports to provide reliable information on airlines.

Modernising the CAA's Governance, Funding and Enforcement Arrangements

Governance

Q10.1 and Q10.2 We see no reason why these proposals will significantly enhance the quality of regulatory decisions, but do not object to the proposals as they will not increase the regulatory burden.

Funding

Q11.1 An obligation on the CAA only to consult on its charges would provide a relatively weak incentive on the CAA to properly budget and set charges. This obligation should be strengthened by obligations on the CAA not to distort competition when levying charges and to publish a detailed explanation supporting its budget, the overall level and the structure of its charges.

Enforcement

Q12.2 and Q12.3 We are broadly supportive of the move to civil sanctions (and support exceptions noted in paragraph 12.17 where the option of criminal sanctions should be retained). Nevertheless, it would be important for the DfT and CAA to consult carefully on the detail of these proposals before implementing any new arrangements.

Q 12.6 Where it is practicable to do so the costs of enforcement should be met by the undertakings in breach of the relevant conditions. Any other costs of enforcement should be met from central government funds – as the proceeds of fines and penalties will flow to central government. If it is not possible to do this then these costs should be borne by each sector of the industry in proportion to its share of the enforcement activity.

Reforming the Scope of the ATOL Scheme

These are issues largely for airlines, travel companies and consumer groups. Gatwick Airport has no comments on these matters.

Other Reforms

Q14.1 In relation to the making of airport byelaws we suggest that the process could be made more efficient by combining steps 1 and 3, and, steps 2 and 4. So in deciding whether a byelaw is necessary and appropriate the airport operator should also produce a draft of the byelaw. The consultation process should then encompass both the need for the byelaw and the drafting of the byelaw. There should also be a legitimacy presumption in respect of byelaws which follow the model code.

Q14.2 We agree that the consultation process and the Secretary of State's involvement as a statutory consultee should provide an appropriate degree of democratic accountability to the process for producing airport byelaws.

Q14.3 We agree with proposals for resolving challenges to airport byelaws.

Q14.4 We agree that where airport byelaws broadly follow the model code then they should not require the Secretary of State's confirmation and that his/her involvement should be limited to the circumstances where byelaws vary significantly from the model code (and for clarity where they add significantly to the model code).

Q14.5 We agree that the process of consultation on byelaws, the publication of model byelaws and the ability to challenge byelaws in the courts should provide sufficient protections for the public against flawed airport byelaws.

Your faithfully

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