



CONSUMER PROTECTION GROUP

OFFICIAL RECORD SERIES 2 NUMBER 2104, 10 SEPTEMBER 2013

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Part 1 **Notices about Operating Licences, Route Licences, Air Transport Licences, and Scarce Capacity Allocation**

This contains notices about applications for and decisions on licences, and about CAA licensing proposals. It should be read in conjunction with the CAA's Official Record (OR) Series 1 and the relevant legislation, which is set out in OR Series 1.

Part 2 **Notices of hearings and miscellaneous notices**

This contains information about any forthcoming public hearings to be held by the CAA, and miscellaneous notices.

Part 3 **Use of foreign registered aircraft**

This contains details of applications for and approval by the Secretary of State of wet leases of aircraft registered outside the EEA by UK operators and charters.

Part 4 **Notices published on behalf of Guernsey, Jersey and Alderney authorities**

The information in this section is published by the CAA on behalf of the air transport authorities in the Channel Islands.

All enquiries about this publication should (unless another particular contact is given) be addressed to:

Airline Licensing and Consumer Issues
Room K3, CAA House
45-59 Kingsway
London WC2B 6TE

Tel: 020 7453 6333
Fax: 020 7453 6322
E-mail: airlinelicensing@caa.co.uk

PART 2 NOTICES OF HEARINGS AND MISCELLANEOUS NOTICES

B Miscellaneous notices

Decisions

Appeal to the Civil Aviation Authority under Regulation 20 of the Airports (Groundhandling) Regulations 1997 made by Ryanair Limited against Gatwick Airport Limited and BAA Airports Limited – the CAA’s decision and directions to Gatwick Airport Limited

On 30 April 2012 Ryanair appealed to the CAA under the Airports (Groundhandling) Regulations 1997 (“the Regulations”) that Gatwick Airport Limited (GAL) had not determined its charges for check-in desks and associated baggage facilities according to the criteria in Regulation 16(d).

The CAA investigated the matter, holding a public Appeal Hearing under the Regulations on 13 and 14 November 2012 to consider written and oral representations from the parties, Ryanair and GAL.

The CAA upheld the appeal in the following respects:

GAL did not use non-discriminatory criteria when it set its charges for check-in and baggage from 1 April 2012. The way GAL allocated certain costs led to a situation where, by effect, similar terms were set for dissimilar transactions without a sufficient objective justification to overcome the fact that its actions meant that those airlines wishing to innovate in a way that made less use of these particular airport facilities could not realise a sufficient share of these gains and pass them on to passengers. Consequently, this undermined one of the stated objectives of the EU Groundhandling Directive, namely that the opening up of access to the groundhandling market should ultimately help to reduce the operating costs of airline companies and improve the quality of service provided to airport users. In particular, the Panel upheld that GAL’s allocation of two particular items of costs, namely planned maintenance costs and rates, resulted in charges that had a discriminatory effect against Ryanair.

Having found that GAL did not comply fully with the provisions of Regulation 16(d), the CAA has given the following direction to GAL in accordance with paragraph 7(2)(b) in Part 1 of Schedule 2 to the Regulations:

The CAA directs GAL to ensure that the following provisions are met:

A)

Charges relating to the planned maintenance costs of providing check in and baggage facilities shall reflect relevant material differences in intensity of use by airport users and shall comply with Regulation 16(d). In particular:

GAL’s charges attributable to planned maintenance costs, in relation to the departing baggage system and the arriving baggage system shall be calculated so as to reflect the time-in use required by individual airlines.

- a) For the departing baggage system, time-in use shall be calculated by reference to an objective, transparent, relevant and non-discriminatory measure.
- b) The allocation of planned maintenance costs of the departing baggage system shall be set out below in compliance with Regulation 16(d). This allocation of costs shall be used for the purpose of setting charges for check-in and baggage facilities for the year beginning 1 April 2014 and for subsequent years unless GAL and airport users agree a modification to the allocation of costs that is compliant with Regulation 16(d). Time-in use shall be calculated by using Timeslice Data to estimate the period during which the baggage system is in use per Air

Transport Movement (ATM). The costs of planned maintenance in relation to the departing baggage system shall be allocated to individual airlines as set out below based on the periods in use identified for their flights by reference to that Timeslice Data.

- i. This allocation shall be done by calculating an Airport Average Timeslice per ATM and an Average Timeslice per ATM for individual airlines. This shall be used to produce a Departure Baggage Weighting Factor for each airline.
 - ii. The Airline Departing Baggage Weighting factor shall be applied to the overall Airport Average Departing Baggage Charge per ATM calculated by dividing the departing baggage share of Planned Maintenance Costs based on Timeslice Data by the overall number of forecast departure ATMs over the relevant period.
 - iii. The application of the Airline Departing Baggage Weighting factor as described above shall produce a Departing Baggage Charge per ATM for individual airlines.
 - iv. The relevant period shall be as agreed between GAL and airport users. In the absence of agreement, the relevant period shall be 12 months or such other reasonable period as notified to and approved by the CAA.
- c) For the arriving baggage system, time-in use shall be calculated by reference to an objective, transparent, relevant and non-discriminatory measure.
- d) The cost of planned maintenance of the arriving baggage system shall be allocated as set out below in compliance with Regulation 16(d). This allocation of costs shall be used for the purpose of setting charges for check-in and baggage facilities for the year beginning 1 April 2014 and for subsequent years unless modified through consultation between GAL and airport users in a way that is compliant with Regulation 16(d).
- i. Time-in use shall be determined by reference to Last Bag data on the time between the time of arrival of the aircraft on stand and the time the last bag on a flight is delivered to the carousel gathered over the relevant period.
 - ii. This data shall be used to calculate an Airport Average Last Bag Time and an Airline Average Last Bag Time for each airline using Gatwick.
 - iii. A weighting factor for each airline shall be calculated by dividing the Airline Average Last Bag Time by the Airport Average Last Bag Time.
 - iv. The planned maintenance costs for the relevant period attributable to arrivals baggage overall shall correlate to the total time in use calculated by reference to the Last Bag data as described above. This shall then be divided by the total forecast number of arriving ATMs to produce an Airport Average Arriving Baggage Charge per ATM.
 - v. The weighting factor described above shall be applied to the Airport Arriving Baggage Charges per ATM to produce an Airline Arrival Baggage Charge per ATM for individual airlines.
 - vi. The relevant period shall be as agreed between GAL and airport users. In the absence of agreement, the relevant period shall be 12 months or such other reasonable period as notified to and approved by the CAA.

B)

1) Charges which reflect the costs of rates payable by GAL shall be calculated by reference to an objective, transparent, relevant and non-discriminatory measure.

2) The allocation of costs attributable to rates shall be as set out below in compliance with Regulation 16(d). This allocation of costs shall be used for the purpose of setting charges for check-in and baggage for the year beginning 1 April 2014 and for subsequent years unless modified through consultation between GAL and airport users in a way that is compliant with Regulation 16(d).

3) GAL shall continue to allocate costs attributable to rates based on floor space occupied by distinct activities. In relation to the allocation of costs attributable to rates for the check-in areas, the departing baggage areas and the arriving baggage areas, these shall be apportioned among individual airlines by reference to relevant, transparent and non-discriminatory criteria which reflect any material differences in the intensity of use by individual airlines' passengers of the check-in areas, the departing baggage areas and the arriving baggage areas.

C)

Information and Consultation

GAL shall:

- a) consult users each year on its annual forecasts of costs, the anticipated use of check-in and baggage facilities and its proposed charges for use of those facilities for the forthcoming year commencing on 1 April 2014: and
- b) provide users each year with a timely and sufficient explanation of:
 - i. the costs forecasts for the forthcoming year commencing on 1 April regarding the anticipated use of the check-in and baggage facilities and the proposed charges for the use of those facilities; and
 - ii. the actual costs of the check-in and baggage facilities and the use made of those facilities during the preceding year ended 31 March and the charge levied in relation to those facilities during the preceding year.
- c) make the information in (b) available to all users at the same time in a transparent manner, for example via its website.
- d) calculate charges that would have been payable by Ryanair for the use of check-in and baggage facilities for the period from 1 April 2012 until 31 March 2014 had these Directions been in force from 1 April 2012 and provide these calculations to Ryanair.

D)

Reporting requirements

If so requested by the CAA, GAL shall publish reports on progress made towards compliance with the directions in A and B above. Any obligation to publish reports shall cease on the date that a charging structure that satisfies A and B comes into effect.

E)

Entry into force

These Directions shall have effect from the date of issuing and shall remain in force unless and until they are modified or revoked by the CAA.

The CAA's full decision and the directions can be found at:

[Decision](#)

[Directions](#)