

The Airport Charges Regulations 2011

CAA Annual Report 2013–14



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CHAPTER 1

Introduction

- 1.1 The Airport Charges Regulations 2011 came into force on 10 November 2011. The Regulations implemented European Directive (2009/12/EC) on airport charges into UK law. The Directive covers airports that handle more than 5 million passengers per annum, and:
- introduces common principles of transparency and consultation for airports in determining charges levied on airlines;
 - stipulates that airport charges should be non-discriminatory;
 - allows differentiated charges based on relevant, objective, transparent and non-discriminatory criteria;
 - requires Member States to appoint an independent supervisory authority (ISA) to ensure the correct application of the Directive; and
 - sets up mechanisms for resolving disputes about the level of airport charges, unless satisfactory procedures already exist under national law to assess whether airports are subject to effective competition.¹
- 1.2 The Regulations require the CAA, as the UK ISA, to publish an annual report concerning the exercise of its functions (Regulation 32). This is our second annual report and covers the period from 1 January 2013 to 31 March 2014. We published our first annual report in March 2013 for the period from 10 November 2011 (when the Regulations came into force) to 31 December 2012.² We expect future reports to cover our financial year from April to March.
- 1.3 During the period of the report we had the following functions under the Regulations:
- to give notice to an airport operator that the Regulations apply in relation to that airport for that year (Regulation 5);
 - to publish a list of regulated airports for the following year (Regulation 6);
 - to investigate whether an airport operator is failing, or has failed to comply with an obligation under the Regulations (Regulation 20);

1 Article 6(5)(b) of the Directive.

2 [The Airport Charges Regulations 2011 – CAA Annual Report 2012](#)

- to impose a compliance order on an airport operator that is failing, or has failed, to comply with an obligation under the Regulations (Regulation 21);
- to examine whether an airport operator, in relation to a regulated airport, has or is likely to acquire substantial market power (Regulations 23 and 25)³; and
- to consider imposing a penalty on an airport user (Regulation 16) for failing to provide prescribed information to an airport operator under Regulation 7(4).

Structure of report

1.4 The rest of this report is structured as follows:

- chapter 2 looks at how we have exercised our functions under the Regulations;
- chapter 3 looks at other issues concerning the Regulations, including the European Commission's review of the application of the Directive, our 2010 Emerging Thinking on the Directive and our approach towards monitoring and enforcing the Regulations.

3 This function was removed from the Regulations with effect from 6 April 2013 for airport in Northern Ireland and from 1 April 2014 for airports in England, Scotland and Wales because the CAA now has these functions as a result of the Civil Aviation Act 2012.

CHAPTER 2

The CAA's work under the regulations

Qualifying airports

- 2.1 We have a function under Regulation 5(1)(b) to give notice to an airport operator that the airport will be subject to the Regulations in a particular year. In February 2013, we gave notice to the nine airports that had over 5 million passengers in 2012 that they would be subject to the Regulations in 2014. In January 2014, we gave notice to the nine airports that had over 5 million passengers in 2013 that they would be subject to the Regulations in 2015.
- 2.2 We have a function under Regulation 6(2) to publish the list of airports which we consider are regulated airports in each year. In February 2013, we published a list of the airports that are subject to the Regulations in 2014. In February 2014, we published a list of the airports that will be subject to the Regulations in 2015 as follows.

Regulated airports in 2014 and 2015

Airports covered by Regulations	2014	2015
	Passenger numbers in 2012 (million)	Passenger numbers in 2013 (million)
Heathrow	69.983	72.232
Gatwick	34.219	35.429
Manchester	19.654	20.680
Stansted	17.465	17.849
Luton	9.614	9.693
Edinburgh	9.194	9.775
Birmingham	8.916	9.114
Glasgow	7.150	7.358
Bristol	5.916	6.125

Source: CAA Airport Statistics

Provision of information by airport users

- 2.3 In the period covered by this report it was not drawn to our attention that airport users had failed to provide the necessary information to any of the qualifying airports. Consequently, we have not considered imposing any penalties on airport users for failing to provide information.

Compliance with obligations by airport operators

- 2.4 We have a function under Regulation 20 to investigate whether an airport operator is failing, or has failed, to comply with an obligation imposed on it under the Regulations. We may do so at any time but if we receive a complaint from a person on whom airport charges have been levied at the airport, or from another airport operator which claims its business has been materially harmed by an alleged failure to comply with the Regulations, we must investigate that complaint.
- 2.5 We have not received any complaints that an airport operator has not complied with an obligation under the Regulations, nor have we investigated whether an airport operator was failing to comply, or had failed to comply, with an obligation under the Regulations during the period of this report.
- 2.6 If we are satisfied that an airport operator is failing to comply, or has failed to comply, with an obligation under the Regulations, we may impose a compliance order on the airport operator under Regulation 21. As follows from paragraph 2.5 we have not imposed any compliance orders during the period of this report.

CHAPTER 3

Other issues

European Commission report on the application of the Directive

3.1 On 19 May 2014 the European Commission published a report on the application of the Directive.⁴ The Commission found that the main positive effects were increased transparency in defining airport charges at larger airports, better consultation and the setting up of ISAs in Member States. However, there were specific problems regarding transposition and application in a number of Member States. Comments in the report that related to the UK were:

- the Directive imposed mandatory consultation procedures for the first time at UK airports within the scope of the Directive which had previously not been subject to economic regulation;
- airport users at larger airports in the UK were generally satisfied with the consultation procedure;
- at European airports with a wider base of airport users (including Heathrow) users were generally satisfied with the consultation procedure and found it useful to have codified guidelines at EU level; and
- users at UK airports considered that information was provided in a transparent manner and on a regular basis;

3.2 The report drew upon a study by Steer Davies and Gleave carried out for the Commission.⁵ They reported that the Netherlands and UK had been repeatedly quoted as “best in class” with independent and strong ISAs and regulatory frameworks but were not beyond improvement.

3.3 In June 2014 the Commission held the first meeting of a new European expert group, the Thessaloniki Forum of Airport Charges Regulators.

4 [Report from the Commission to the European Parliament and the Council on the application of the Airport Charges Directive](#)

5 [Evaluation of Directive 2009/12/EC on airport charges \(September 2013\)](#)

CAA emerging thinking on the Directive

- 3.4 In December 2010, we published our emerging thinking on implementing the European Directive in the UK⁶. This publication predated the Regulations. In our Emerging Thinking, we said that the effective operation of a competitive airport market in the UK was the primary means by which airport users would receive cost-effective access to airport capacity, services and facilities. We continue to hold this view and consider that the common framework for consultation and transparency established by the Directive and Regulations serves to reduce the asymmetry of information between airports and their users and, thus, aids the effective operation of the airport market in the UK.
- 3.5 Since we produced our Emerging Thinking the UK regulatory regime has been reformed. The Civil Aviation Act 2012 (the Act) has replaced the economic regulation framework in Part IV of the Airports Act 1986 with a new system of market power assessments and licensing of airports that meet the market power test in the Act⁷. The Act also gave us concurrent powers (with the Competition and Markets Authority (CMA)) to enforce with respect to the provision of airport operation services the prohibitions in the Competition Act 1998 on:
- agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the UK; and
 - an abuse of a dominant position in a market.

6 'Implementing the Airport Charges Directive in the UK – CAA Emerging Thinking' (December 2010) at <http://www.caa.co.uk/docs/5/ergdocs/20101207ACDEmergingThinking.pdf>.

7 The test in section 6 of the Act consists of tests A, B and C:

Test A – the airport operator has, or is likely to acquire, substantial market power, either taken alone or taken with such other persons as the CAA considers appropriate;

Test B – competition law does not provide sufficient protection against the risk that the airport operator may engage in conduct that amounts to an abuse of that substantial market power; and

Test C – for users of air transport services, the benefits of regulating the airport operator by means of a licence are likely to outweigh the adverse effects.

An airport is licensed if it passes all three tests.

- 3.6 Under Part IV of the Airports Act 1986 we had powers to investigate and remedy various specified courses of conduct, including allegations that an airport operator had unreasonably discriminated between airlines. In the period of this report, we published the results of two investigations of such allegations: by Flybe about the structure of airport charges at Gatwick⁸ and by Aer Lingus about the structure of airport charges at Heathrow.⁹ If we received such allegations now we would consider them using our powers in either the Regulations or under the Competition Act. We would decide in any particular case which route was likely to be the more effective.
- 3.7 As we have the Commission's report on the application of the Directive, the legislation governing the economic regulation of airports has changed significantly and there is now some experience of the Regulations, we plan to consult stakeholders before the end of 2014/15 on how we should interpret and implement the Regulations going forward. We expect that this consultation will lead to guidance that will replace our Emerging Thinking.

The CAA's approach towards monitoring and enforcing the Regulations

- 3.8 As we consider that the effective operation of a competitive airport market in the UK is the best way of meeting airport users' requirements, we have adopted a proportionate approach to carrying out our functions under the Regulations. We routinely see details of the consultations that the two airports licensed under the 2012 Act, Heathrow and Gatwick, hold annually with airlines on airport charges. We do not routinely ask to see details of other airports' consultations with airlines. As the Commission did not find problems with transparency and consultation at UK airports and we have received no complaints in this area we are planning to maintain the same approach in 2014/15.

8 [Investigation under Section 41 of the Airports Act 1986 of the structure of airport charges levied by Gatwick Airport Limited \(January 2013\)](#)

9 [Investigation under Section 41 of the Airports Act 1986 of the structure of charges levied by Heathrow Airport Limited - CAA decision \(March 2014\)](#)

3.9 Our approach to issues such as discrimination over the years has been complaints-driven rather than to launch investigations on our own initiative and we intend to continue with this approach in 2014/15. However, as we now have a statutory duty under the Act to keep under review the provision of airport operation services in the UK in the context of our concurrent competition powers with the CMA, we do not rule out investigating issues that may arise as part of our more general monitoring of the aviation market.

Civil Aviation Authority

July 2014

