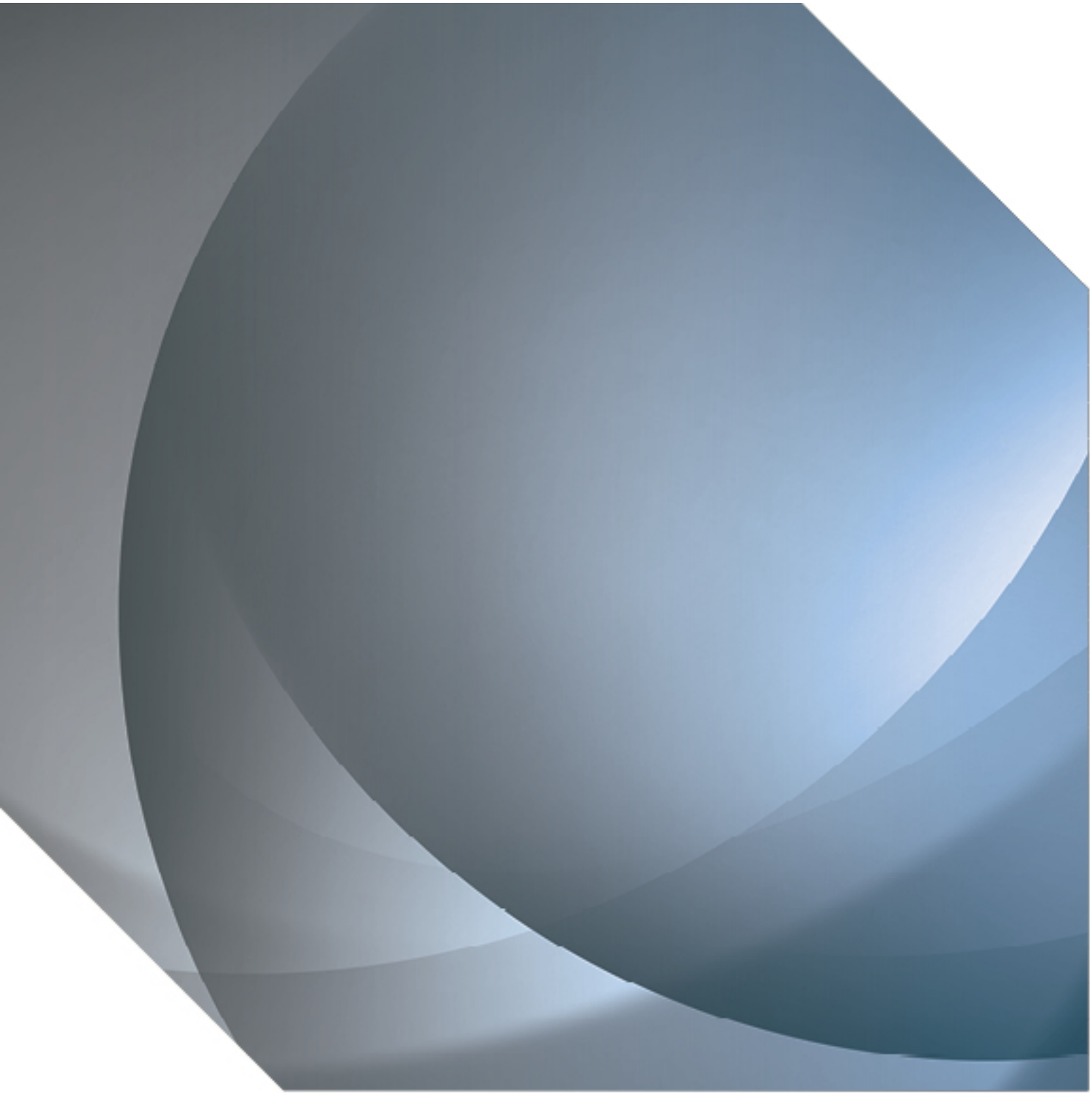
Markets and Consumers Group

Guidance on the application of the CAA's powers under the Airport Charges Regulations 2011

CAP 1343



Published by the Civil Aviation Authority, 2015

The latest version of this document is available in electronic format at www.caa.co.uk

Contents

Chapter 1

Introduction

Purpose of this document

1.1 The purpose of this document is to advise airport operators, airport users and other stakeholders of how we intend to interpret, monitor and enforce the obligations on airport operators and users under the Airport Charges Regulations 2011[1] (ACRs). The ACRs implement the European Airport Charges Directive[2] (the Directive) in the UK.

1.2 The guidance cannot be comprehensive in that it cannot cover every possible set of circumstances. Instead it aims to set out the general framework we will use so that stakeholders are aware of the processes we will normally follow and the principles to which we will have regard when applying the ACRs. However, when the facts of an individual case reasonably justify it, we may adopt a different approach.

1.3 This guidance should not be regarded as a legal authority and is not a substitute for stakeholders reading the ACRs and obtaining their own legal advice.

1.4 This guidance replaces the document we issued in December 2010, which set out our Emerging Thinking on how we planned to implement the Directive in the UK[3].

About the CAA

1.5 We are the UK's specialist aviation regulator. Our regulatory activities range from making sure that the aviation industry meets the highest technical and operational safety standards to preventing holiday makers from being stranded abroad or losing money because of tour operator insolvency. We are the economic regulator for airports and air traffic services and provide advice on aviation policy to the Government. We are also a national competition authority and, for airport operation services and air traffic services, we have the power, concurrently with the Competition and Markets Authority (CMA), to enforce the prohibitions in the Competition Act 1998 (CA98).

1.6 Our strategic objectives are:

- to enhance aviation safety performance;

1 The Airport Charges Regulations 2011.

2 Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges.

3 'Implementing the Airport Charges Directive in the UK - CAA Emerging Thinking' (December 2010).

- to improve choice and value for aviation consumers;
- to improve environmental performance;
- to ensure civil aviation organisations operating in the UK maintain security arrangements which address the risk to their operations and the public; and
- to ensure that we are an efficient and effective organisation which meets better regulation principles and gives value for money.

1.7 We follow Better Regulation principles so we are committed to regulating in a way that is transparent, proportionate, targeted, accountable and consistent. When enforcing the ACRs we will follow our Enforcement Policy[4].

The CAA's role under the Regulations

1.8 The ACRs set out common principles for the relationship between airport operators and airport users as required by the Directive. These relate to the levying of airport charges at UK airports which serve more than five million passengers in a year. In particular, the ACRs:

- set minimum standards for the provision of information;
  - from airport users (those carrying passengers, mail or freight by air) to airports (on their future requirements); and
  - from airports to airport users (on the basis on which they calculate and set their charges, the proposed amount of the charges and their actual charges);
- require airports to consult airport users on their proposed level of charges, take the airport users' views into account, and respond to any objection from an airport user; and
- require airports to set non-discriminatory charges and to fairly allocate scarce capacity.

1.9 We have been nominated as the UK's Independent Supervisory Authority (ISA) for the purposes of the Directive and are responsible for enforcing the ACRs.

1.10 When carrying out our functions under the ACRs, we are required:

1. to further the reasonable interests of users of airports within the United Kingdom (users include airlines, general aviation, and passengers[5]);
2. to promote the efficient, economic and profitable operation of such airports;
3. to encourage investment in new facilities at airports in time to satisfy anticipated demands by the users of such airports; and

4 'Civil Aviation Authority - Regulatory Enforcement Policy'

5 As our statutory duties under the ACRs are our statutory duties in the Airports Act 1986, the definition of users in our duties is that in the Airports Act and not that in the ACRs.

4. to impose the minimum restrictions that are consistent with the performance by the CAA of its functions.

1.11 We also have to take into account such of the international obligations of the UK that have been notified to us by the Government[6].

1.12 The ACRs import the CAA's duties that are found in section 39 of the Airports Act 1986 and Article 40 of the Airports (Northern Ireland) Order 1994. They differ from our duties in the Civil Aviation Act 2012 (CAA12), under which we have a general duty to further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operational services. Our duties under the ACRs, give equal weight to the interests of airlines, some general aviation and passengers, whereas our CAA12 duties give primacy to the interests of passengers and those with rights in air cargo.

1.13 Airports and airport users may complain to us where they consider the provisions of the ACRs have been breached. As the UK has made use of the opt out in Article 6(5) of the Directive we are not responsible under the ACRs for dispute resolution between airports and users[7].

1.14 When enforcing the ACRs, we must perform our functions with a view to ensuring that to the extent possible, changes to the system or level of airport charges are agreed between airport operators and any airport user who would be liable to pay the charges[8].

1.15 We do not consider that the ACRs should be interpreted to create a quasi-regulated structure for airports that are not licensed under CAA12.

1.16 We must also provide information, advice and assistance[9]. This guidance is an example of such advice. However, unless we decide to investigate a complaint

---

6 On 16 November 2007 the Government notified us of the following international obligations as they relate to the imposition of charges on airlines:

- Article 15 of the Chicago Convention;
- air services agreements in force between the European Union and its Member States and any third country or countries; and
- air services agreements in force between the UK and any third country or countries.

7 Article 6(5) of the Directive allows Member States not to require their ISA to carry out a dispute resolution role if there is a mandatory process under national law by which:

- the ISA examines on a regular basis, or in response to requests from interested parties, whether airports are subject to effective competition; and
- whenever warranted by the investigation, airport charges, or their maximum level, are determined or approved by the ISA.

8 Regulation 28(3)

9 Regulation 28(4)

under the ACRs, we will not provide opinions on whether there appears to be a breach of the ACRs in a particular case. To do so would prejudice our formal role in deciding whether an airport operator (or user) has breached the ACRs.

1.17 Finally, the ACRs give us information gathering powers. More information on our information powers, and the way we handle confidential information is set out in Chapter 9.

Structure of this document

1.18 The document is divided into the following chapters and annexes:

- Chapter 2 - Scope of the ACRs
- Chapter 3 - Parallel regimes
- Chapter 4 - Obligations on airport users
- Chapter 5 - Obligations on airport operators - Information, consultation and publication
- Chapter 6 - Obligations on airport operators - Non-discriminatory pricing and service provision
- Chapter 7 - Investigation process and decision making
- Chapter 8 - Imposing a compliance order on airport operators
- Chapter 9 - Information gathering and disclosure
- Annex A - Process for imposing a penalty on airport users and appealing a penalty
- Annex B - Managing Aviation Noise - Good practice principles for airports to use when setting airport charges to encourage quieter flights
- Annex C -Information required in a written, reasoned complaint.

Chapter 2

Scope of the ACRs

Introduction

2.1 This chapter describes:

- which airports are subject to the ACRs;
- what charges are covered by the ACRs; and
- who are regarded as airport users under the ACRs.

Airports subject to the ACRs

2.2 Under Regulation 4(1), an airport is subject to the ACRs in a particular calendar year if more than five million passengers used the airport in the calendar year two years before. For example, airports are within the scope of the ACRs in 2015 if they had more than five million passengers in 2013.

2.3 Under Regulation 6(2), by 1 March each year, or as soon as practicable after, we publish a list of airports that will be subject to the ACRs in the following year. In February 2015 we published a list of the airports covered in 2016. The lists of airports subject to the ACRs in the current and following years are set out on our website[10]. We inform airport operators of their inclusion in the list before we publish it.

2.4 We also publish monthly and annual airport statistics on our website[11]. We derive the annual list of airports described above from this data.

Airport charges

2.5 The following are airport charges subject to the obligations in the ACRs:

- landing charges;
- take-off charges;
- airport air navigation service charges;
- aircraft parking charges;
- passenger processing charges (such as Passenger Load Supplements); and
- passenger security charges[12].

10 At http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14467

11 At http://www.caa.co.uk/default.aspx?catid=80&pagetype=88&pageid=3&sglid=3

2.6 The ACRs specifically exclude the following items from the definition of airport charges:

- penalties paid under noise control schemes;
- penalties under schemes established by managers of aerodromes;
- charges for airport installations necessary for groundhandling;
- charges for chargeable air traffic services;
- charges for services to passengers with reduced mobility; and
- charges for en route and terminal air traffic services under the European common charging scheme.

Airport users

2.7 The definition of an airport user in Regulation 3(1) is a person responsible for the carriage of passengers, mail or freight by air to or from the airport. We consider that this definition encompasses general aviation as well as commercial aviation. Airports should note, therefore, that general aviation users are entitled to receive the information airports are obliged to provide under the ACRs and to expect airport operators to have regard to their consultation responses. Nonetheless, we will expect to see airport operators using a proportionate approach to avoid imposing an unnecessary burden on users.

2.8 The ACRs apply to the relationships between airports and the users of the airports concerned. We consider that airports may use appropriate tools to identify those parties who are their users in order to determine the scope of their obligations under the ACRs. These may, for example, include, identifying a user as a party which has actually used the airport in question in the previous 12 months.

12 This definition of airport charges is the same as was set out in the Airports Act 1986 and is also in line with the charges considered to be airport charges in standard industry documents (such as ICAO's policies on charges for airports and air navigation services (Doc 9082) and in airport charges comparisons).

Chapter 3

Parallel regimes

3.1 We can consider airport operator behaviour with respect to airport charges under a number of different statutory regimes. For example, it is possible the same behaviour could potentially be evaluated under different legislation as follows:

- discriminatory charging that breaches the ACRs;
- a breach of an airport economic licence granted under CAA12[13]; and
- an abuse of a dominant position under CA98.

3.2 It is important that we are clear on how we will use our resources to look at behaviour that is potentially subject to different regulatory regimes. A key principle we would adopt in this respect is that we intend to avoid investigating the same facts more than once. Our approach to dealing with complaints is set out below.

Where we have not started any investigation

3.3 In the event of receiving a complaint under the ACRs from a person on whom airport charges are levied, or from another airport operator which claims its business has been harmed, we must investigate it. We would, therefore, deal with that complaint under the ACRs unless we thought that it had been incorrectly submitted, in which case we would discuss this with the complainant.

3.4 In the event of receiving a complaint under competition law or as a licence breach, on a matter we thought was best dealt with under the ACRs, we may advise the complainant to withdraw its complaint and resubmit it under the ACRs. We would reserve our right to deal with such complaints using our prioritisation principles[14].

3.5 If we receive a complaint from any other person which we are not required to investigate under the ACRs, we would assess whether to investigate it using our prioritisation principles. If the airport operator's behaviour could also, potentially, be prohibited under UK and European competition law or be a potential licence breach, if we decided to investigate, we would decide which one regime we would use to undertake any investigation and apply only one regime.

13 We licence airport operators that pass a market power test set out in CAA12. Currently, we have issued licences to Heathrow Airport Limited and Gatwick Airport Limited.

14 'Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation Work' (May 2015)

Where we are already dealing with, or had dealt with, an issue under the ACRs

3.6 If we also received a complaint that the same behaviour already complained about under the ACRs was also prohibited under UK and European competition law[15], or was a licence breach under CAA12, we would normally assess the complaint only under the ACRs and not under the other legislation as well.

Where we are already investigating under other legislation

3.7 If we receive a complaint under the ACRs about conduct which we are already investigating under other legislation, our handling of the matter will depend on whether we are obliged to investigate it under the ACRs:

- if we are obliged to use the ACRs we will do so, and normally stop any investigation under other legislation. We are only likely to continue investigating a case under other legislation if there are aspects to it that we could not consider under the ACRs, or if we are close to completing our existing investigation. In the latter circumstance we might ask the complainant to withdraw its complaint under the ACRs; and
- if we are not obliged to use the ACRs, we would normally continue our existing investigation rather than starting a new investigation under the ACRs, unless there were circumstances specific to the case that meant that using the ACRs would be more appropriate.

Primacy of competition law

3.8 Under section 46 of CAA12 we are required to consider, where appropriate, using competition law to deal with any particular issue before we use our economic licence enforcement powers. However neither this legislation nor subsequent guidelines or Regulations refer to the ACRs. We are, therefore, satisfied that the requirement to consider, where appropriate, using competition law would not necessarily require us to consider using competition law to consider complaints under CA98 as well as, or instead of, the ACRs[16].

15 The CAA, concurrently with the Competition and Markets Authority, has the power to apply and enforce the competition prohibitions - that is Chapters I and II of CA98 which prohibit anti-competitive agreements and an abuse of a dominant position respectively (the UK competition prohibitions) and the equivalent EU law prohibitions in Articles 101 and 102 of the Treaty on the Functioning of the EU (the EU competition prohibitions).

16 In this context, we note that when easyJet complained to the European Commission under Article 102 of the European Treaty about airport charges at Schiphol Airport, the Commission decided that, as the Netherlands ISA had already looked at it under equivalent legislation to the ACRs, the case had already been considered under competition law and, therefore, the Commission decided not to pursue an investigation itself. The General Court of the European Union approved of this approach when dismissing easyJet's challenge to that Commission decision (Case T-355/13 easyJet Airline Co. Ltd v Commission,

Chapter 4

Obligations on airport users

4.1 Under Regulation 7(1), an airport operator has to give notice to individual users requesting certain information within a specified period of not less than 30 days. The information is set out in Regulation 7(2) as:

- forecasts of its traffic at the airport;
- forecasts of the composition and envisaged use of its fleet at the airport;
- its development projects at the airport; and
- its requirements at the airport.

4.2 The notice must invite users to make representations or provide any other information to the airport operator as to the system or level of airport charges and the associated quality of service.

4.3 Airport operators and users will discuss their future operations as part of their ongoing relationship. We would not expect information provided by users under Regulation 7(4) to go beyond that they would normally submit to the airport in the course of commercial operations.

4.4 Information provided by users will be confidential to the user. Airport operators must ensure that this confidentiality is respected. Information on anything other than a wholly aggregated basis must not be disclosed to other airport users without the consent of the user who supplied the information.

4.5 Although the requirement is for the airport operator to request this information from all users and for all users to provide it, at larger airports in particular, knowledge of the requirements of every single user may not make a material difference to the development of the airport's facilities and services. We expect an airport operator to advise all its users that it is willing to receive information from them and that information received will be taken into account. We understand that airport operators may not always find it easy to identify and communicate with all GA users. If this is the case, an airport operator may use appropriate tools to work out who are its users, such as identifying GA users who have used the airport in the past year. It may also send the information to other GA users who request it whether or not they are users of the airport concerned, but is not obliged to do so. An alternative would be for the airport operator to place the information on its website, along with a notification to known GA users and relevant GA representative bodies of where to find it. We will take a

decision of 21 January 2015).

proportionate approach to enforcing the requirement on users to respond to information notices from airport operators. We would be unlikely to consider taking enforcement action (referred to below) unless a complaint is raised with us by an airport operator.

4.6 If we find that an airport user has failed to provide information to an airport operator, we can impose a financial penalty on the user under Regulation 16. Under Regulation 17 any penalty must be appropriate and proportionate to the breach for which it is imposed. The maximum amount of a penalty is £5,000.

4.7 In February 2014 we published a statement of policy on penalties under chapter 1 of CAA12[17]. In the statement, we said in deciding whether a penalty would be appropriate we would be guided by the six penalty principles set out in the 2006 Macrory report "Regulatory Justice: Making sanctions effective"[18]. We also said that when determining the amount of a penalty we would consider whether any adjustments are appropriate to reflect mitigating or aggravating factors in the particular case[19]. More information on our approach is in the statement.

4.8 The process we must use before imposing a penalty on an airport user is found in Regulation 16. This process is also set out in Appendix A.

---

17 'Economic regulation of airports: Statement of policy on penalties under Chapter 1 of the Civil Aviation Act 2012'.

18 The Macrory report says a penalty should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issues, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

19 Mitigating and aggravating factors we said which may be considered include:

- the speed with which steps have been taken to return to compliance;
- any steps which have been taken to minimise the risk of non-compliance recurring;
- the extent of involvement of directors or senior management in the action or inaction;
- repeated or continuing infringements generally;
- whether the person reported the non-compliance or tried to conceal it;
- the existence and effectiveness or otherwise of proactive preventative measures;
- evidence that the breach was genuinely accidental or inadvertent;
- cooperation with our investigation; and
- whether the breach could have endangered safety.

Chapter 5

Obligations on airport operators - Information, consultation and publication

Introduction

5.1 This chapter discusses:

- our approach to consultation and transparency obligations;
- the provision of information by airport operators to users;
- other aspects of transparency;
- consultations with users on airport charges;
- multi-annual agreements; and
- consultations on the provision of infrastructure.

Our approach to an airport operator's consultation and transparency obligations

5.2 The European Commission's 2014 report on the application of the Directive[20] mentioned that users were generally satisfied with the extent of consultation and transparency at UK airports[21]. For this reason our guidance does not recommend particular methods by which airports can comply with these aspects of the ACRs. However, the Commission reported that some of the smaller airports had concerns about the formality of the consultation process and the administrative burden associated with organising a formal consultation procedure. The limited degree of participation by airlines in consultations was also mentioned. We have taken these findings into account in our Guidance.

5.3 Regulations 7 to 9 set out a framework for multilateral consultation, including setting requirements for timetabling and provision of information. These are set out in more detail below. We consider it is helpful to set out our approach to our interpretation of and, therefore, our enforcement of, those obligations.

5.4 The ACRs require airport operators to provide information that enables users to understand the basis on which charges are calculated and ultimately the amount

20 'Report from the Commission to the European Parliament and the Council on the application of the Airport Charges Directive' (May 2014).

21 The European Commission's report also specifically mentioned that users were generally satisfied with the consultation procedures at larger airports in the UK.

of the charges. In our view, this obligation applies to the airport's published tariff. We do not consider that this obligation requires airport operators to publish the charges paid by individual airlines under negotiated agreements. This is because in our view the ACRs should not hinder the development of negotiated agreements between airport operators and users. We consider that such agreements are a normal part of commercial behaviour which allows users to grow their services at an airport. Passengers would normally be expected to gain from the resulting lower airfares or increased service frequency, or from other service improvements. We consider this approach is consistent with our duty, set out in the ACRs[22], to ensure that, wherever possible, charges are agreed between airport operators and airport users.

5.5 As well as complying with the obligations publicly to provide information to, and consult with, all users[23], we expect that airport operators will also consult with users on a bilateral basis where appropriate. This would, for example, allow users to share appropriate commercial information that they would not be willing to disclose in meetings at which their competitors are present.

5.6 We would not expect airport operators to disclose to all users the key commercial details of individual negotiated agreements as to do so could breach competition law. Requiring such disclosure would be likely to reduce the chance of future agreements being made, thus preventing further consumer benefits from being realised. However, if airport operators are prepared to negotiate with users over airport charges, we do expect them to inform all users that they are prepared to negotiate with them.

5.7 In addition, airport operators should be prepared to disclose their overall rationale for making such agreements and indicate the kinds of commitments they would accept from airlines in return for lower prices.

5.8 When entering into such agreements, we remind airport operators that notwithstanding our view that the ACRs permit negotiated agreements, airport operators need to be mindful of the provisions of Regulations 14 and 15 covering discrimination and the provision of differentiated services as well as wider competition law[24]. These are discussed in the next chapter.

22 Regulation 28(3)

23 Unless, as allowed under Regulation 10, in a particular year, the airport operator and all users agree the obligations on information provision and consultation in Regulations 7 and 8 do not apply.

24 The Directive is stated as being without prejudice to the EU Treaty and in particular its provisions on competition.

Provision of information by airport operators to users

5.9 Under Regulation 8, an airport operator covered by the ACRs has to supply to all users:

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

5.10 Some of this information is likely to be included in airport operators' statutory accounts. However, in some cases, the information the airport operator is required to provide under the ACRs goes beyond this, for example, in terms of the degree of disaggregation required or in the provision of forecasts.

5.11 Where the ACRs require information on forecasts to be disclosed (such as traffic forecasts) such information may be confidential. Airport operators which are listed on public securities markets will need to comply with the applicable disclosure regulations if they release it into the public domain.

5.12 Under Regulation 10, if an airport operator and all users agree, the formal information exchange in Regulations 7 and 8 need not take place. Instead, the operator and all users could agree that a more informal exchange is sufficient. This is more likely to be appropriate when all, or most, users have bilateral agreements with the airport operator.

Consultations with users on airport charges

5.13 Under Regulations 9 and 13, airport operators intending to change the system or level of airport charges in their published tariff must:

- consult with users[25] at least four months before making a change (unless there are exceptional circumstances making this not practicable);
- take any representations into account;
- publish details of a change at least two months before the change takes effect (if practicable); and
- respond to any notice of objection received from an airport user.

5.14 We consider dialogue between airport operators and users as well as the four month and two month notice periods for consulting on and setting airport charges to be important. We note that early notification of expected charges facilitates advance ticket sales and holiday bookings which we consider to be in the interests of consumers. Where there are exceptional circumstances which prevent strict adherence to the four month notice period, we expect airport operators to promptly inform users and us of the circumstances.

5.15 We do not expect airport operators to increase charges without observing the stipulated four months' and two months' notice periods except on rare occasions. Where an airport operator cannot give four months' notice, it must explain the exceptional circumstances to users and to us. Exceptional circumstances obviously must not be regular occurrences. An example of an exceptional circumstance that may warrant an increase in charges at short notice, is the introduction of considerably more stringent security requirements with little or no advance warning, where the costs of implementing the requirements would have a material effect on the airport operator's overall costs. Otherwise we expect compliance with the timelines in the ACRs.

5.16 Before deciding to continue or change the system and level of airport charges, an airport operator has to have regard to any representations made by users during the consultation. In addition, if any user objects to the changes decided upon, the airport operator has to inform the user of the reasons for disagreeing with the objections.

5.17 Except where the airport operator and all users agree, consultations on airport charges have to be held annually. However, under Regulation 11 airport operators do not have to consult annually with users about airport charges if

[25] If an airport operator finds it difficult to identify all potential GA users, it could use one of the methods of sending information to GA mentioned in paragraph 4.5 above. Airport operators may also want to consider whether it would be appropriate for them to hold separate meetings with commercial airlines and GA users.

there is an agreement between the airport operators and all users using the airport (a multi-annual agreement). However, the Secretary of State for Transport, or the Department for Regional Development in Northern Ireland may direct any airport operator covered by the ACRs to consult on the system or level of its airport charges even if there is a multi-annual agreement. There are currently no such directions.

5.18 Where there are negotiated agreements (that often cover more than one year) and where these cover most, if not all, users, there might be little benefit from a consultation process that has no real impact on airport charges but is only held because of the requirement in the ACRs for annual consultations. In such circumstances, airport operators and users might make use of the provision to agree not to consult on airport charges each year. In enforcing the ACRs in these circumstances, we would be unlikely to be concerned about the lack of an annual consultation if we did not receive a complaint from a user that it had not been consulted with properly.

Service level agreements

5.19 Under Regulation 12, the transparency requirements in Regulations 7 and 8 do not apply to the results of negotiations between an airport user and airport operator about service levels and the charges paid for the provision of agreed service levels, i.e. service level agreements.

Consultations on provision of infrastructure

5.20 Under Regulation 27, airport operators planning to undertake a major infrastructure project at the airport must consult airport users about the plans before they are finalised. The EU Directive states that airport operators should consult on infrastructure projects as they have a significant impact on the system or level of airport charges. Also such information should be provided in order to make monitoring of infrastructure costs possible and with a view to providing suitable and cost-effective facilities at the airport.

5.21 For major projects that will take several years to complete, we expect that consultation would be an ongoing process as more information becomes available and decision points in the project are reached.

5.22 Neither the ACRs nor the Directive define a major airport infrastructure project. We do not prescribe a financial threshold for which airport investments should be considered to be major infrastructure projects. We do however, expect each airport operator to provide users with clear information on the threshold which it uses to determine which investment projects are captured by Regulation 27.

5.23 That said, we would expect that a new runway or terminal should be considered to be major infrastructure projects, as should:

- projects associated with significant assets inside terminals which have a bearing on user operations, such as check-in desks and baggage systems;
- major airfield reconfiguration, such as new taxiways or aircraft parking stands; and
- significant surface access projects.

5.24 The provision of information by users to airport operators about their traffic forecasts, fleet use and requirements at airports under Regulation 7 should assist the airport operator in assessing the need for future investment at the airport.

Chapter 6

Obligations on airport operators - Non-discriminatory pricing and service provision

Introduction

6.1 This chapter relates to:

- the obligation on airport operators to charge non-discriminatory prices, while allowing charges to be varied for reasons relating to the public and general interest; and
- the allocation of scarce facilities.

Non-discriminatory pricing

6.2 Under Regulation 14(1), an airport operator must not discriminate between users when setting airport charges. We consider that this element of the ACRs should be applied in a similar (although not identical) way to competition law[26], in that:

- the test for discrimination is the same;
- we can order the airport operator to change its behaviour and remedy any damage; and
- anybody who has suffered can claim damages through the Courts.

6.3 We consider that the definition of discrimination for this purpose is the same as under UK and European competition law, that is: applying dissimilar conditions to equivalent transactions, or equivalent conditions to dissimilar transactions[27]. Therefore, other than for demonstrable public interest or general interest reasons, where an airport operator is providing an equivalent product to users, at an equivalent cost of supply, it should charge users an equivalent price.

6.4 Similarly, the ACRs, like competition law, require airports to be able to provide relevant, objective and transparent justification for differences in charges. While the ACRs do not require this information to be provided "up front" to users, the airport will need to develop any charging proposals with the provisions of Regulation 14 in mind and, therefore, will need to have any such justification prepared and available in the event of a challenge.

26 Article 3 of the Directive dealing with non-discrimination refers specifically to Community law.

27 The conduct is defined in section 18 of CA98 as 'applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage'

6.5 Specifically, in considering whether their reasons are relevant, objective and transparent, airport operators should have regard to the following:

- relevant – for criteria to be considered relevant, they ought to be applicable to the circumstances in question, i.e. factors that should be rightly taken into consideration in justifying differentiated charges;
- objective – objectivity may be defined as the ability to present or views facts in a dispassionate and repeatable manner, that stands up to outside scrutiny and is rationally apparent to a disinterested observer; and
- transparent – transparency is an essential condition for those operating in a market, which ensures that the rules to which they are subject are made obvious. Transparency in the context of the ACRs requires that the reasons behind the prices charged, are clear to all so that charge payers can establish that they are being treated fairly.

6.6 We will refer to case law (especially case law in relation to competition law, the ACRs, section 41 of the Airports Act 1986 (now repealed)[28] and the European directive, including decisions taken in other Member States) to assist in assessing the existence of discrimination and the appropriateness of any charging differentiation.

6.7 When investigating allegations of discriminatory pricing we shall consider each case on its merits. However, the following (which is not an exhaustive list) may be among reasons which could justify airports setting differentiated charges:

- differences in the quality and scope of service;
- differences in the allocation of fixed and common costs attributable to a user's activities;
- differences in commercial revenues generated by different users; and
- encouraging a more efficient use of the airport.

6.8 These reasons are considered in more detail below.

Quality and scope

6.9 The ACRs allow airport operators to differentiate their charges to reflect differences of quality and scope of the services and facilities provided to users. The provision of a more basic terminal (for example one with less space per passenger, less seating and lower standards of finish), or fast track security would be examples of services of different quality. Examples of differences in scope include the use or not of airbridges and the use of a pier-served stand as opposed to a remote stand. We note that rebates for use of a remote stand are

[28] Details of recent cases under section 41 are on our website at: http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14467.

common at UK airports.

6.10 We consider that where an airport operator and user agree a commercial contract under which the user is charged a lower price in return for agreeing commitments, for example, to provide the airport with a certain level of traffic for a number of years, such a commitment would reduce the volume risk faced by the airport which, in turn, may reduce the airport's cost of doing business and is, therefore, capable of being a justifiable reason for imposing lower charges than on other users.

Cost allocation

6.11 Case law shows that it is not always straightforward for airport operators to allocate their costs to services and facilities used by different users in order to work out their relevant cost of supply. In theory, an airport could set its prices for a product or service to an airline anywhere in a range from the incremental cost of providing the product (without allocating any of its fixed costs to the product) to the standalone cost of providing the product (that is allocating all of its fixed costs to the product). In practice, it is likely that an airport operator would set its prices somewhere within this range rather than at either extreme.

6.12 One particular form of cost allocation is Ramsey pricing, in which fixed costs are allocated according to the elasticity of demand for the product[29]. The more elastic the demand for the product the less fixed cost would be allocated to it, while more fixed costs are allocated to products with inelastic demand. In other words costs are allocated to products (or users) in relationship to their willingness to pay for them. This form of cost allocation would lead to the highest level of activity at the airport, so it is often seen to be an efficient form of allocation.

6.13 Finally, it is recognised that using cost modelling can only approximate the different costs that users impose on airport operators and, therefore, an exact correlation between costs and charges may not be necessary. We would, however, expect allocation methodologies to be relevant, objectively derived and transparent.

Commercial revenues

6.14 Where passengers on some routes produce larger commercial revenues for airport operators, airports could be justified in taking account of the additional profits they earn from the extra revenue when setting prices.

29 Ramsey pricing was proposed by Frank Ramsey in 1927 in the context of taxation. Under Ramsey pricing, the price markup is inversely proportional to the price elasticity of demand.

Efficient use of airport

6.15 Under competition law, undertakings can justify their conduct by demonstrating that it produces substantial efficiencies which outweigh any anti-competitive effects on consumers[30]. However, the undertaking has to demonstrate that:

- the efficiencies have been, or are likely to be, realised as a result of the conduct;
- the conduct is indispensable to the realisation of the efficiencies;
- the likely efficiencies outweigh any likely negative effects on competition and consumer welfare; and
- the conduct does not eliminate effective competition by removing all or most existing sources of actual or potential competition.

6.16 Ramsey pricing, mentioned above, would be one form of efficient pricing. Peak pricing could be another form of efficient pricing, where flights that use the airport at peak times are charged higher prices than those which use the airport at less busy times. As airlines usually vary their charges according to the demand for the flight, peak pricing could also reflect the value that users place on such flights.

Other factors we will consider

6.17 Where an airport operator differentiates its charges based on any of the above arguments, we would expect it to have robust evidence for doing so. Normally, we would expect the evidence to have a quantitative aspect. However, there may be qualitative justifications as well. However, precisely measuring the costs of providing a service to a specific user or, for example, the price elasticities of individual users, may not be straightforward. In the event that an airport was unable to reliably perform such an analysis, we consider that there would be less justification for differentiation of charges.

6.18 Finally, under competition law, any airport operator that has a dominant position has a special responsibility to ensure that its conduct does not distort competition. In investigating cases involving such airports, we will place particular attention on the need for them to demonstrate that their charging structures are objectively justified and do not put particular users, or classes of users, at a competitive disadvantage.

30 See the European Commission's guidance on its enforcement priorities in applying Article 82 (now Article 102) of the EC Treaty (2009/C45/02).

Varying prices for reasons relating to the public and general interest

6.19 Regulation 14(2) allows airport charges to be varied for reasons relating to the public and general interest, including reasons relating to the environment. The criteria used for varying the charges must be relevant, objective and transparent.

6.20 For example, it is common for UK airports to vary their charges according to the noise characteristics (and sometimes emission characteristics) of aircraft. In May 2014, we set out a series of good practice principles for airports to use when setting landing charges to encourage quieter flights[31]. These are set out in Appendix B. In our view, adopting these principles is consistent with the ACRs[32].

6.21 We also consider that airport operators would be acting in the public and general interest in setting charges that complied with international obligations. Other reasons relating to the public and general interest may also be acceptable. Airport operators should make it clear to airport users what they consider to be the general and public interest that they are taking into account when they are seeking to vary their charges in accordance with Regulation 14(2) and how the variations in question promote that interest.

Allocation of scarce facilities

6.22 The ACRs allow airport operators to offer services and facilities of differing quality and scope.

6.23 Regulation 15 sets out rules for what should happen when the particular differentiated service cannot be provided to all airport users who wish to use it. Regulation 15(2) states that allocation of a scarce differentiated service must be made by the airport operator on the basis of relevant, objective, transparent and non-discriminatory criteria.

6.24 Airport operators are free to set their own scarce resource allocation criteria as long as they comply with these obligations. We consider criteria that might meet these requirements are likely to be associated with operational efficiency or passenger requirements, and may include:

- the routes and the type of passenger served by the user at the airport;
- the efficiency of the use that the user makes of the facility; and
- the transition costs associated with airport users moving locations (e.g. between terminals).

31 'Managing Aviation Noise' (2014)

32 In implementing these principles airport operators would have to ensure they were not entering into anti-competitive agreements.

Chapter 7

Investigation process and decision making

Introduction

7.1 This chapter discusses:

- when we would normally formally investigate an alleged infringement by an airport operator of the ACRs; and
- how we would investigate an alleged infringement.

7.2 Alleged infringements by airport users are covered in Chapter 4.

When we would normally investigate an alleged infringement of the ACRs

Telling us about your concerns

7.3 Complainants can contact us to share information with us informally and discuss any concerns they may have relating to whether an airport or airport user complies with the ACRs.

7.4 We encourage those with concerns to read this guidance and consider the following suggestions before making a formal complaint:

- **Try and resolve matters through discussions**. As set out in paragraph 1.13, we are not a dispute resolution body. Not every disagreement is suitable for resolution by us through an investigation. We would normally expect those with concerns to try to resolve problems by direct discussions between the airport operator and the airport user before asking us to intervene.
- **Speak to us**. We are always prepared to discuss emerging issues. We will not provide a binding view on the merits of an issue unless we receive a formal complaint. We can, however, provide information, advice or assistance and we may be able to refer complainants to policy statements or investigations that have dealt with similar issues. If you would like to share any information or raise any concerns, please email economicregulation@caa.co.uk. Any information you provide will be treated in confidence[33].

33 Please note all information you provide to us is subject to the obligations and protections of the Freedom of Information Act 2000 and, where applicable, the Environmental Information Regulations 2004. If we decide to formally investigate an alleged infringement of the Regulations it is unlikely that we would not disclose the identity of the complainant.

- **Consider any relevant decisions**. The issue of concern may have been the subject of a previous decision under the ACRs or other legislation. Details of previous reviews, studies and decisions are available on our website[34].
- **Gather as much evidence and information as possible**. We realise that, in some cases, potential complainants may not have access to all relevant information. However, you should gather as much evidence as possible to support any complaint.

7.5 Once you have talked to us, we may ask you to send us supporting information or invite you to submit a formal complaint as explained in this Guidance.

Complaints we must investigate

7.6 Under Regulation 20(2), if we receive a complaint from a person on whom airport charges are levied, or from another airport operator which claims its business has been materially harmed by the alleged failure to comply with the ACRs, we must investigate. If we receive a complaint from any other category of person, we will consider whether to investigate. We are more likely to take up a complaint if it is made by a person or body with a close link or association with a payer of airport charges or an airport operator. Complaints must be made in writing. The information that we would expect to see in a complaint is set out in Appendix C[35]. Other than where the complaint is frivolous, we would not apply our prioritisation principles and would not conduct the early stage analysis set out in paragraphs 7.7 to 7.11 below.

Complaints for which we have discretion whether we investigate - early stage analysis

7.7 If we receive a complaint from a party other than one covered by Regulation 20(2), we can investigate but are not obliged to do so. In some cases, we may be able to resolve an issue through informal advice to complainants. As we have discretion over whether we do investigate we would apply our prioritisation principles (referred to in paragraph 3.4) to determine whether to conduct an investigation by following the early stage analysis below.

7.8 In our early stage analysis, we may gather further information to help us decide whether to open a formal investigation. Taking account of any confidentiality concerns of the complainant, we may discuss the matter with other stakeholders where we believe that they may be able to provide information or other assistance to help us decide whether to launch a formal investigation.

7.9 Following these initial enquiries, we may request that the complainant submit to

34 http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523

35 Appendix C allows complainants to send us both a confidential version and non-confidential version of their complaints if there are issues around confidentiality.

us a written reasoned complaint to form the basis for further action. The information we would expect to see in a written reasoned complaint is set out in Appendix C.

7.10 Once we have gathered any further information, we will consider what action to take next.

7.11 If we decide not to investigate, we will advise the person who brought the matter to our attention that we have decided not to open an investigation and the reasons why we have reached that decision. We will identify any other avenues that might be available to the complainant, and make clear that we may re-prioritise their complaint in future in accordance with our prioritisation principles if new information emerges.

How we would investigate an alleged infringement

7.12 This section sets out the key elements on how we will manage an investigation into an alleged infringement of the ACRs.

Publish notice of the investigation

7.13 Once a formal investigation is opened (and the complainant and complainee have been informed), we will publish a notice of our decision to conduct a formal investigation[36]. This would indicate which aspect of the ACRs is suspected to have been infringed and set out the nature of the suspected infringement.

Information gathering

7.14 Once a formal investigation has been opened, we will use our statutory powers[37] to gather further information where necessary[38].

7.15 When requesting information, we will specify the alleged infringement that we are investigating. In the first instance, we are likely to seek information from the airport operator (or user) that is the subject of the investigation and from the complainant. We may also seek information from appropriate third parties.

Statements of our Preliminary View and parties' rights to make representations

7.16 Before deciding whether there has been an infringement of the ACRs, we will provide a Statement of our Preliminary View ('SPV') to the airport operator and user (or users) concerned and provide them with an opportunity to make

36 In drafting the notice we would take account of any confidentiality concerns of the complainant.

37 Regulation 30 applies the information powers under section 73 of the Airports Act 1986 to the CAA in order to carry out is functions under these Regulations.

38 More details on how we handle information is in Chapter 9.

representations[39]. The SPV sets out our preliminary position regarding the alleged infringement, including the key elements of law and fact that have led to that conclusion, so that the alleged infringer is clear what case it is being asked to address. It will also include our preliminary view on what action (if any) we are considering taking and why, if we do conclude there has been a breach of the ACRs. This could include imposing a compliance order requiring the airport operator to take appropriate steps. Such steps include securing compliance with the airport operator's obligations under the ACRs, and remedying any loss or damage sustained, or to rectify any injustice suffered by any person as a result of its failure to comply with the ACRs. The addressees will be given access to our file, subject to appropriate confidentiality arrangements, so that they can comment on the evidence that has led to our preliminary view and gather evidence that might support their own case in respect of our SPV.

7.17 Following receipt of an SPV, parties[40] will be asked to make written representations to us on the statement. Depending on the nature of the case, we may also allow parties to develop their position on the statement through representations at an oral hearing.

7.18 Should subsequent evidence come to light after the parties' written (and, if applicable, oral) representations, we will notify them of the new evidence and our views on it by a letter of facts or a supplementary SPV and allow them a further opportunity to comment on it before we take a final decision.

7.19 Although we will use the same process to investigate any alleged infringement, the time taken to complete the investigation is likely to vary according to the complexity of the issues involved. For example, issues concerning discrimination are likely to be more complex than those relating to consultation. At the start of our investigation, we shall inform the parties involved of the indicative timetable for the case.

Withdrawal of a complaint

7.20 We encourage the parties to a complaint to continue to discuss the matters concerned and, if possible, to agree a resolution of the matter themselves. If the parties would find it helpful, we would be willing where appropriate to facilitate their discussions. If the parties reach agreement and the complainant withdraws its complaint, we would not investigate the matter further.

Decisions on infringements

7.21 The CAA may consider delegating decisions on some cases to a Case Decision Panel as is its practice with competition cases.

---

39 We will consider issues around confidentiality when producing the SPV.

40 The parties to a case will normally be the complainant and complainee.

Chapter 8

Imposing a compliance order on airport operators

Introduction

8.1 This chapter discusses:

- imposing a compliance order on airport operators;
- breaches of obligations - Court action;
- publishing decisions; and
- appeals.

Enforcing airport operators' obligations

8.2 If we find that an airport operator has infringed the ACRs we have a discretion to impose a compliance order on it under Regulation 21. In deciding whether to issue a compliance order we would have regard to our duties set out in Chapter 1 of this guidance.

8.3 We may accept binding commitments from the airport operator as an alternative to imposing an order. We are only likely to consider it appropriate to accept commitments if the infringement is addressed by the commitments offered and the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.

8.4 A compliance order can require the airport operator to take appropriate steps to:

- secure compliance with the ACRs; or
- remedy any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply; or
- both.

8.5 Where the airport operator has failed to comply, but is currently complying with the ACRs and is unlikely to fail to comply again, an order may require the airport operator to take the appropriate steps to remedy any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply.

8.6 We are unlikely to issue a compliance order if we conclude that any breach has had no detrimental effect on consumers or competition. In deciding whether to impose a compliance order, or the terms of it, in line with our prioritisation principles, we would have regard to the likely direct or indirect impact of our action for consumers and whether it would reverse any detrimental effects on competition between users.

8.7 Likewise we are unlikely to require an airport to pay damages[41] to an airport user unless we consider that the airport operator's behaviour has adversely affected consumer interests or competition. In some cases where we have concluded the behaviour has breached the ACRs and had an adverse effect on consumer interests and competition we may nevertheless decide the civil courts are better placed to assess the quantum of damages and refrain from issuing an order for the payment of damages.

Breaches of obligations: Court action

8.8 A person affected by a breach of an obligation under the ACRs may pursue a case for damages in civil courts[42]. They may take this action whether or not they have asked us to investigate the alleged breach, whether or not we have found there to be a breach, and whether or not we have exercised our discretion to impose a compliance order. Nonetheless where we have published a relevant decision we anticipate that the civil courts would take our views into account.

Publishing decisions

8.9 Where we make a decision, we will publish the decision on our website. We would take into account issues about the confidentiality of information when publishing our decision.

8.10 When making public the outcome of our investigation, we will have regard to whether the information to be published is market sensitive or could otherwise harm a party's legitimate commercial interests. We will take this into account when deciding on the timing of announcements, as is current practice for the announcements that we make relating to price control proposals and decisions.

Appeals

8.11 Under Regulation 22, the provisions of section 49 of the Airports Act and Article 40 of the Airports (Northern Ireland) Order 1994 apply in relation to the breach of an obligation by an airport operator. These provisions allow an airport operator to apply to the Court within 42 days from the date of service of the compliance order to question the validity of the order in Court. The validity can only be questioned on the ground that the order is not within our powers under Regulation 21. If the Court is satisfied that the compliance order is not within the powers set out in Regulation 21, the Court may quash the order or any provision of the order.

41 Pursuant to Regulation 21(3)(b)

42 Regulation 19

Chapter 9

Information gathering and disclosure

Information gathering

9.1 In investigating alleged breaches of the ACRs, as well as reviewing the information contained in a complaint, we will make use of publicly available information and, where permitted, information already available to us through our regulatory and competition activities.

9.2 Even where we have extensive information obtained from a complaint or information that has been obtained for another regulatory purpose, we may need to supplement that information to determine whether there has been a breach of the ACRs. In such circumstances, we may rely on parties to cooperate and provide information on a voluntary and informal basis before having recourse to our formal information gathering powers.

9.3 Our formal information gathering powers are set out in Regulation 30. We can use our powers under section 73 of the Airports Act 1986 to obtain information that we may reasonably require for the purpose of performing our functions under the ACRs in relation to airports in England, Wales and Scotland. For airports in Northern Ireland we can use our equivalent powers under Article 48 of the Airports (Northern Ireland) Order 1994 (the Order) to obtain information.

9.4 We are not allowed to require the production or disclosure of information which a person could not be compelled to produce in civil proceedings in the Courts.

9.5 We are conscious of the burden that information requests can place on business. When determining the scope of information requests, we will therefore seek to be fair and reasonable, and issue clear and focussed requests with a realistic timeframe for response. If any information request we send causes you any difficulties or raises any queries, you should raise these with us as soon as possible after receiving a request, or as soon as you become aware that you will not be able to meet the stipulated deadline.

Disclosure of information

9.6 We aim to be transparent in the way we carry out our functions under the ACRs. Under section 74 of the Airports Act and Article 49 of the Airports (Northern Ireland) Order there are information gateways under which we can disclose information where disclosure would facilitate the performance of our functions under the ACRs.

Data Protection Act 1998 principles

9.7 The Data Protection Act controls how personal information relating to individuals is used so that individuals are treated fairly. Where we process such data, we must comply with the data protection obligations set out in the Act.

9.8 Where we propose to share personal information about an individual with another organisation, the Act requires that we inform the individual that their information may be shared, so the individual can choose whether or not to enter into a relationship with us.

9.9 A person may request a copy of any information that we hold about that person in whatever format. If that person is not satisfied with our response, they may complain to the Information Commissioner's Office[43].

Freedom of Information Act 2000

9.10 The Freedom of Information Act 2000 gives people access to information held by public authorities. Where we receive a valid request for information, we must respond within 20 working days. We must (i) inform the applicant whether we hold any information which falls within the scope of their request and, if we do, (ii) provide that information, unless an exemption applies. There are a number of exemptions from disclosure.

9.11 By way of example, we are not required to disclose information where:

- disclosure would be prohibited by any enactment, including the Airports Act 1986 and the Airports (Northern) Ireland Order 1994. This is an absolute exemption, which means there is no obligation under the Freedom of Information Act to release the required information;
- disclosure, would, or would be likely to, prejudice the exercise by us of our statutory functions for the purpose of ascertaining whether any person has failed to comply with the law or for the purpose of ascertaining whether circumstances which would justify regulatory action may exist or may arise. This is a qualified exemption and so is subject to a public interest test, which means that we are required to assess the balance of the public interest for and against disclosure; or
- disclosure would fall within one of the other exemptions in the Freedom of Information Act, such as those relating to the disclosure of confidential information (held under a legal duty), trade secrets and other commercially sensitive information.

9.12 Our website explains how to make a request for information under the Act[44]. Any

43 Further information on contacting the Information Commissioner's Office is available from http://ico.org.uk/concerns

44 http://www.caa.co.uk/default.aspx?catid=1357&pagetype=90

person not satisfied with our refusal to provide the requested information may seek a review by the CAA of that refusal. There is a further right to complain to the Information Commissioner's Office if that person is not satisfied with the outcome of the review.

Our approach to disclosure in case handling

9.13 We must balance the often competing, considerations of transparency and openness on the one hand against the protection of confidential information on the other hand.

9.14 When providing submissions or supplying information to us, for example in response to an information request, parties should identify which of the information is confidential and give reasons why its disclosure would significantly harm their interests. We do not accept blanket or unsubstantiated confidentiality claims. We will carefully consider these explanations, having regard to the relevant legal considerations, before we decide whether to disclose the information concerned.

9.15 We may consider that the information concerned is not confidential or we may consider that it is confidential but we may consider that the need to disclose the information, for example for reasons of procedural fairness and due process, outweighs the interests of the party which requests that the information is kept confidential.

9.16 Where we decide that disclosure is permitted and would be appropriate, prior to making decisions, typically we will notify the party claiming confidentiality or the party to whom the confidential information relates that we propose to disclose the information and will provide details of that information.

9.17 We will consider the manner of disclosure having regard to any appropriate protections. For example, where appropriate, we may disclose ranges or we may redact or anonymise confidential information. We may use confidentiality rings or data rooms if we are satisfied that the information should be disclosed but consider that the sensitive nature of the material requires additional safeguards to be applied.

9.18 The CAA has discretion as to whether or not to use the procedures described above. A confidentiality ring ensures that the information is provided to specified persons subject to those persons giving us an undertaking not to disclose the information further. A data room is a physically secure, continually monitored environment, in which a restricted number of persons, typically parties' external legal and/or economic advisers, may access confidential information.

9.19 Access to documents in a confidentiality ring or data room will be subject to confidentiality undertakings provided by the persons with access which address, among other things, how they may use the information disclosed and the

restrictions on onward disclosure. It will be a condition of access to the confidentiality ring or data room that information reviewed by advisers is not shared with their client(s). Before access to a data room is granted, advisers are required to give us undertakings regarding their conduct in the data room, in particular how they handle the information. We expect that data rooms will not be used often in the context of our ACR investigations.

APPENDIX A

Process for imposing a penalty on airport users and appealing a penalty

A1 If we impose a financial penalty on an airport user for failing to provide information to an airport operator, we must follow the process set out below. Under paragraph 1 of Schedule 1 to the ACRs the decision to impose a penalty can be taken by an employee of the CAA as well as by one or more CAA Board members.

A2 Before imposing a penalty we must:

- give the user a notice about the proposed penalty; and
- publish the notice as soon as possible.

A3 The notice must:

- state that we propose to impose a penalty;
- state the proposed amount of the penalty; and
- specify the act or omission which we consider has breached Regulation 7(4).

A4 We must consider representations about the proposed penalty before imposing a penalty. If we propose to vary the proposed amount of the penalty we must repeat the process above. That is:

- give the person on whom the penalty is imposed a notice about the proposed variation;
- publish the proposed amount of the penalty; and
- consider representations from stakeholders made within a period of 21 days from the date of the notice.

A5 As soon as possible before imposing a penalty we must:

- give a notice to the user on whom the penalty is being imposed; and
- publish the notice.

A6 The notice must:

- state that we have imposed a penalty;
- state the amount of the penalty;
- specify the act or omission which we consider has breached Regulation 10(4);
- specify that the penalty is due to be paid within 30 days; and
- (if the decision is made by an employee of the CAA) inform the airport user of the right to request a review of the penalty under Schedule 1.

APPENDIX B

Managing Aviation Noise - Good practice principles for airports to use when setting airport charges to encourage quieter flights

B1 Noise charging categories should be based on ICAO certification data, namely the margin to Chapter 3, to incentivise best-in-class technology use.

B2 Noise charging categories should be of equal width, typically 5 EPN dB, or narrower, to ensure adequate differentiation of noise performance.

B3 The noise charging categories used at a given airport should cover the full range of aircraft in operation at the airport. This range should be reviewed periodically and modified as appropriate.

B4 Noise charges for operations occurring at night should be greater than those that occur during the day.

B5 Where noise-related charge differentials occur depending on the time of day of an operation, the scheduled time of the operation should be used as opposed to the actual time. Penalties may be used to disincentivise operations scheduled to occur on the cusp of the night period that regularly fall into the night period.

B6 There should be a clear distinction between noise-related landing charges and any non-noise related charges, e.g. demand-related charges.

B7 Charging schemes should ideally be harmonised across airports within the UK. Aircraft should be treated similarly from one airport to another, even if the charges at each airport are different.

APPENDIX C

Information required in a written, reasoned complaint

C1 To be treated as a written, reasoned complaint, a written submission to us should contain the following information.

1 Information on the complainant and the target of the complaint

C2 Details of the complainant - Name and contact details (address, phone number, and e-mail address) of the complainant. This should contain details of a person authorised to discuss the detail of the complaint.

C3 Details of the airport operator.

2 Details of the complaint

C4 Reasons for the complaint: The complaint should set out the reasons for making the complaint, including a detailed description of the behaviour it believes infringes the ACRs. In particular, the following information must be provided:

1. the part of the ACRs it believes is being infringed;
1. a summary of events with relevant dates, including details of any relevant contact between the complainant and the airport operator (for example, meetings, phone calls, e-mails);
2. reasons why it believes the airport operator's behaviour infringes the ACRs; and
3. the effects of the behaviour on the complainant and any adverse effects of the behaviour on other airport users.

C5 Action sought: Details of any action which the complainant wishes us to take. This should include an explanation of whether (and, if so, why) the complaint is urgent.

3 Factual evidence supporting the complaint

C6 The complainant must provide all available evidence (that is, information which the complainant already possesses, or which is readily accessible to it) supporting the complaint.

C7 This may include copies of the relevant documentation (for example, contracts, notes of phone conversations, e-mails, minutes of meetings) and details of any person who can testify to the facts set out in the complaint.

4 Non-confidential version of the complaint

C8 Any confidential information must be clearly marked. The complainant must also send us a non-confidential version of the complaint with the confidential material redacted using robust and reliable techniques.