

The Airport Charges Regulations

Annual Report 2016-17

CAP 1572



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Chapter 1

Introduction

- 1.1 The Airport Charges Regulations 2011 (ACRs) implement European Directive (2009/12/EC, the Directive) on airport charges into UK law. The Directive covers airports that handle more than 5 million passengers per annum, and:
- sets common principles on transparency and consultation for airports in determining charges levied on users;
 - 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 publish an annual report on certain matters relating to the ACRs; 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 competition¹.
- 1.2 In the UK, the CAA is the ISA and, as noted above, we are required to publish an annual report concerning the exercise of our ACR functions (Regulation 32).
- 1.3 This report covers the period from 1 April 2016 to 31 March 2017. Previous reports are available on our website.²
- 1.4 During the period of the report we had the following functions under the ACRs (although circumstances were such that it was not appropriate or necessary for us to exercise all of these functions):

¹ The UK has such procedures under the Civil Aviation Act 2012.

² <http://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Airport-charges-regulations/>

- to give notice to an airport operator that the ACRs 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 consider imposing a penalty on an airport user for failing to provide prescribed information to an airport operator under Regulation 7(4) (Regulation 16);
- to investigate whether an airport operator is failing, or has failed, to comply with an obligation under the ACRs (Regulation 20); and
- to impose a compliance order on an airport operator that is failing, or has failed, to comply with an obligation under the ACRs (Regulation 21).

Structure of this report

1.5 The rest of this report is structured as follows:

- Chapter 2 looks at how we have exercised our functions under the ACRs; and
- Chapter 3 looks at other issues relating to the ACRs; including guidance on the application of our powers under the ACRs and the Thessaloniki Forum of Airport Charges Regulators (established by the European Commission).

Chapter 2

Our work under the ACRs

- 2.1 We have a function under Regulation 5(1) to give notice to an airport operator that the airport will be subject to the ACRs in a particular year. In 2016, we gave notice to the nine airports that had over 5 million passengers in 2015 that they would be subject to the ACRs in 2017. In 2017, we gave notice to ten airports that had over 5 million passengers in 2016 (the same 9 as previously plus Belfast International) that they would be subject to the ACRs in 2018.
- 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. This list is set out in Figure 1 below.

Figure 1: Regulated airports in 2017 and 2018

Airports covered by ACRs	2017	2018
	Passenger numbers in 2015 (m)	Passenger numbers in 2016 (m)
Heathrow	74.954	75.672
Gatwick	40.260	43.115
Manchester	23.095	25.599
Stansted	22.498	24.318
Luton	12.263	14.642
Edinburgh	11.113	12.348
Birmingham	10.179	11.639
Glasgow	8.710	9.324
Bristol	6.781	7.604
Belfast International ³	4.390	5.147

Source: CAA statistics

³ Belfast is not covered by the ACRs in 2017 as it had not yet reached the 5m threshold in 2015, but, because of passenger growth, it will be covered in 2018.

Provision of information by airport users

2.3 Under Regulation 7, airport operators can request information from airport users, such as:

- forecasts of an airport user's 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.

2.4 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.

2.5 In the period covered by this report it has not been drawn to our attention that any airport user 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

2.6 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 ACRs. 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 ACRs, we must investigate that complaint.

2.7 We have not received any complaints that an airport operator has not complied with an obligation under the ACRs, nor have we investigated whether an airport operator was failing to comply, or has failed to comply, with an obligation under the ACRs during the period of this report.

2.8 If we are satisfied that an airport operator is failing to comply, or has failed, to comply with an obligation under the ACRs, we may impose a

compliance order on the airport operator under Regulation 21. We have not imposed any compliance orders during the period of this report.

Chapter 3

Other issues

Guidance on the application of our powers under the ACRs

- 3.1 In 2015, we published guidance on the application of our powers under the ACRs 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 ACRs.⁴
- 3.2 The guidance sets out how airport users and airport operators may complain to us if they consider the provisions of the ACRs have been breached. We encourage those with concerns about possible non-compliance to try and resolve matters through discussions and speak to us before making a formal complaint. Potential complainants should also consider any relevant decisions and gather as much evidence and information as practicable. Details of what we would expect to be in a reasoned, written complaint are available in the guidance.
- 3.3 We encourage airport operators to agree charges with airport users, including through our work on the ACRs. However, we do not regulate airport charges under the ACRs, as the UK has made use of the opt out in Article 6(6) of the Directive. The regulation of airport charges is undertaken using the provisions for market power determinations and economic licensing under the Civil Aviation Act 2012. Of the airports Table 1 above, we have determined that Heathrow and Gatwick met the market power test and are therefore subject to economic regulation by means of a licence issued by the CAA. This year we have not received any requests, or made any decisions, to undertake new market power determinations.

⁴ CAP 1343 'Guidance on the application of the CAA's powers under the Airport Charges Regulations 2011', October 2015, which is available from www.caa.co.uk/CAP1343

- 3.4 In our view the ACRs should not hinder the development of negotiated agreements between airport operators and users. These are part of normal commercial behaviour which allows users to grow their services at an airport. We do not expect airport operators to disclose to all users the key commercial details of individual negotiated agreements (and in disclosing information, airport operators need to act in a way consistent with their obligations under competition law). 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. 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 discounts on prices.
- 3.5 Further, when entering into commercial agreements, airport operators need to be mindful of the need not to discriminate between airport users (Regulation 14) and the provisions on the basis of providing differentiated services (Regulation 15). They must also be prepared to demonstrate to the CAA how they have complied with these Regulations, and if they are asked to do so by the CAA provide evidence that demonstrates compliance.

Enquiries about the application of the airport charges directive

- 3.6 During the year we received a number of enquiries from airlines and airport operators about the requirements and application of the ACRs. We provided advice on the operation of the Regulations and encouraged those who sought advice to engage further with the relevant airline or airport operator.
- 3.7 None of these enquiries resulted in a formal complaint under the Regulations.

Thessaloniki Forum of Airport Charges Regulators

3.8 In 2014, the European Commission established the Thessaloniki Forum of Airport Charges Regulators (Thessaloniki Forum) to advise the Commission on the implementation of the Directive and to promote best practices in the economic regulation of airports.⁵ The Forum's tasks are to:

- assist the Commission in relation to the implementation of existing European Union legislation, programmes and policies;
- assist the Commission in the preparation of legislative proposals and policy initiatives; and
- coordinate with Member States and facilitate the exchange of views.

3.9 The inaugural meeting of the Thessaloniki Forum took place on 13 June 2014 in Thessaloniki, under the chairmanship of the European Commission, DG MOVE. Representatives from 22 national ISAs attended the meeting together with representatives from 6 European Trade Associations (as observers). In conclusion, the Commission noted that the quality of the discussion indicated the usefulness of the forum as providing a platform for European discussion of questions related to airport charges and that further meetings would be planned.

3.10 The second meeting of the Thessaloniki Forum took place on 14 April 2015 in Brussels. The meeting continued discussion on the main themes identified for follow up at the first meeting of the Forum in 2014: airport market power; transparency and in particular, information to be provided by airport operators and airport users as part of the consultation provisions in the Directive; and the Directive's provisions on new infrastructure.

3.11 The third meeting of the Thessaloniki Forum took place on 9-10 December 2015 in Brussels, under the chairmanship of the European

⁵ Thessaloniki Forum of Airport Charges Regulators (E03084), <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3084>

Commission, DG MOVE. Building upon the useful discussions and conclusions of the last meeting of the Forum, the discussion focused on what deliverables the forum can provide on the themes of airport charges transparency, consultation and regarding airport market power.

Sub-group on Consultation and the Cost of Capital

3.12 A sub-group on Consultation and the Cost of Capital of the Thessaloniki Forum was established. We were a member of the sub-group.

3.13 The sub-group on Consultation and the Cost of Capital met as follows:

- 8 March 2016 in Dublin hosted by the Commission for Aviation Regulation, Ireland.
- 2 June 2016 in Madrid hosted by the Comisión Nacional de los Mercados y la Competencia (CNMC).
- 21 November 2016 in Brussels.
- 6 October 2016 in Brussels, under the chairmanship of the European Commission, DG MOVE.

3.14 As a result of that work, the Thessaloniki Forum issued two papers with recommendations on Consultation and the Cost of Capital.⁶

Working group on airport market power assessment

3.15 A working group was established on airport market power assessment of the Thessaloniki Forum. We are a member of the working group. In 2016/17, the working group has met as follows:

- 2 February 2017 in Brussels,
- 27 March 2017 in Brussels.⁷

⁶ Recommendations on Consultation and Transparency, December 2016, <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=29018&no=1>

Recommendations for the Setting and the Estimation of the WACC of Airport Managing Bodies, December 2016, <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=29019&no=2>

⁷ Terms of Reference, agendas and reports of the working group are, or will be made, available at the Thessaloniki Forum's webpage, available at:

- 3.16 The working group is preparing two draft reports on:
- recommendations on market power assessments to ensure that economic regulation of airports in the EU is appropriately targeted. The draft report will be considered by The European Commission (DG MOVE) as part of its evaluation of the Directive;
 - best practice recommendations on undertaking market power assessments that are used to better target airport charge regulation. The idea is that those recommendations would be for the benefit of those ISAs that may be considering undertaking such assessments in the future.

Evaluation of the airport charges directive

- 3.17 The Commission appointed Steer Davies Gleave in 2017 to conduct an evaluation of the Directive for the European Commission.⁸
- 3.18 The evaluation will provide an assessment of the performance of all provisions of the Directive across Member States, since its adoption. The starting point will be the legal text itself, but this evaluation will also look at the Impact Assessment carried out in 2007 in view of the proposed Directive, in particular regarding the considerations on airport market power. The evaluation will also examine to what extent the findings of the 2013 evaluation of the Directive are still valid.
- 3.19 The evaluation includes:
- an open, internet-based public consultation of minimum duration 12 weeks. This open public consultation will seek to gather mainly the views of the 'non-specialist' larger groups of stakeholder, such as EU citizens, EU Member States, consumer associations, travel and tourism industry, etc.

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3084>.

⁸ Evaluation of the Directive 2009/12/EC on Airport Charges, available at http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_move_012_evaluation_airport_charges_en.pdf.

- a set of targeted consultation activities tailored to particular stakeholders groups which are involved directly in the implementation and affected by the provisions of the Directive, namely national independent supervisory authorities (ISAs), including the CAA, airports and airline representatives.

3.20 These activities are underway and the evaluation is expected to conclude during the fourth quarter of 2017. The CAA has and will continue to contribute to this evaluation of the Directive.

Civil Aviation Authority

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