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## STATUTORY INSTRUMENTS

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# 1994 No. 426

## The Airports (Northern Ireland) Order 1994

### PART IV

#### ECONOMIC REGULATION OF AIRPORTS

##### *Preliminary*

#### **Interpretation of this Part**

27.—(1) In this Part—

“the 1973 Act” means the Fair Trading Act 1973<sup>F1</sup>;

“the 1980 Act” means the Competition Act 1980<sup>F2</sup>;

“airport charges”, in relation to an airport, means—

(a) charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at the airport (including charges that are to any extent determined by reference to the number of passengers on board the aircraft, but excluding charges payable by virtue of regulations under section 73 of the 1982 Act (air navigation services etc.)); and

(b) charges levied on aircraft passengers in connection with their arrival at, or departure from, the airport by air;

“air transport services” means services for the carriage by air of passengers or cargo;

“cargo” includes mail;

“the Commission” means the<sup>F3</sup> Competition Commission];

“operational activities”, in relation to an airport, means, subject to paragraph (2), any activities—

(a) which are carried on wholly or mainly for the benefit of users of the airport; or

(b) the revenues from which are wholly or mainly attributable to payments by such users;

“prescribed” has the meaning given by paragraph (3);

“relevant activities”, in relation to an airport, means, subject to paragraph (4), the provision at the airport of any services or facilities for the purposes of—

(a) the landing, parking or taking off of aircraft;

(b) the servicing of aircraft (including the supply of fuel); or

(c) the handling of passengers or their baggage or of cargo at all stages while on airport premises (including the transfer of passengers, their baggage or cargo to and from aircraft);

“user”, in relation to an airport, means—

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- (a) a person for whom any services or facilities falling within the definition of “relevant activities” are provided at the airport; or
- (b) a person using any of the air transport services operating from the airport.

(2) If the Secretary of State makes an order under section 30(4) of the Airports Act 1986<sup>F4</sup> modifying the definition of “operational activities” in that provision, the Department may by order make corresponding modifications of the definition of “operational activities” in paragraph (1).

(3) Without prejudice to the generality of section 7(2) of the 1982 Act (special provisions as respects certain functions of the CAA), regulations made by the Secretary of State in pursuance of that provision may prescribe for the purposes of that provision any functions conferred on the CAA by this Part; and in this Part “prescribed” means prescribed by regulations so made.

(4) The reference in the definition of “relevant activities” in paragraph (1) to the provision of facilities for the purposes of the handling of passengers does not include the provision of facilities for car parking, for the refreshment of passengers at the airport or for the supply of consumer goods or services there.

(5) For the purposes of this Part a body corporate shall be treated as an associated company of an airport operator if either that body or the airport operator is a body corporate of which the other is a subsidiary or if both of them are subsidiaries of one and the same body corporate.

<b>F1</b>	1973 c.41
<b>F2</b>	1980 c.21
<b>F3</b>	SI 1999/506
<b>F4</b>	1986 c.31

### *Permissions*

#### **Airports subject to economic regulation: requirement for permission to levy airport charges**

**28.**—(1) Where an airport is subject to economic regulation under this Part no airport charges shall be levied at the airport unless—

- (a) they are levied by the airport operator; and
- (b) a permission to levy airport charges is for the time being in force in respect of the airport.

(2) Where the annual turnover of the business carried on at an airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before the date when this Article comes into operation, then (subject to Article 44(3)) the airport shall be subject to economic regulation under this Part as from the end of the period of six months beginning with that date.

(3) Where—

- (a) an airport is not one to which paragraph (2) applies; but
- (b) the annual turnover of the business carried on at the airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before a date later than the date when this Article comes into operation,

the airport shall be subject to economic regulation under this Part as from the end of the period of nine months beginning with that later date.

(4) The following shall not be subject to economic regulation under this Part, namely—

- (a) any airport managed by a subsidiary of the Holding Company (within the meaning of Part V);

- (b) any airport managed by the CAA or by any subsidiary of the CAA; or
- (c) any airport for the time being exempted from economic regulation under this Part by virtue of paragraph (5).

(5) Where at any time the Department is satisfied as respects any airport which is subject to economic regulation under this Part that the annual turnover of the business carried on at the airport by the airport operator did not exceed £1 million in the case of each of the two last financial years ending before that time, it may, after consulting the CAA, determine that the airport shall cease to be subject to economic regulation under this Part as from the date of its determination.

(6) Any such determination may be made by the Department either of its own motion or on the application of the airport operator.

(7) A determination under paragraph (5) shall not—

- (a) preclude paragraph (3) from applying to the airport in question on a subsequent occasion; or
- (b) affect any rights or liabilities accruing by virtue of this Part before the determination is made.

(8) Where any person levies any airport charges in contravention of paragraph (1)—

- (a) he shall not be guilty of an offence by reason only of his contravening that paragraph; but
- (b) any airport charges so levied shall not be recoverable by him, and, in so far as they have been paid to him, shall be recoverable from him.

(9) The Department may, by order made with the consent of the Department of Finance and Personnel, substitute for the sum for the time being specified in paragraphs (2), (3) and (5) such greater sum as may be specified in the order.

(10) Where at the coming into operation of an order under paragraph (9) any airport is, or is due to become, subject to economic regulation under this Part in accordance with paragraph (2) or (3), that paragraph shall continue to apply to the airport notwithstanding any increase in the sum specified in that paragraph effected by the order.

(11) Any reference in this Article to the business carried on at any airport by the airport operator shall, in a case where the person for the time being having the management of the airport has not had its management for the whole or any part of any period relevant for the purposes of this Article, be construed as including a reference to the business carried on there by any other person who had the management of the airport for the whole or any part of that period.

(12) In this Article “annual turnover”, in relation to the business carried on at an airport by the airport operator, means the aggregate, as stated or otherwise shown in the accounts of the business, of all sums received in the course of the business during a financial year, including grants from any public body but excluding—

- (a) capital receipts; and
- (b) loans made by any person.

(13) In paragraph (12) “public body” means a body established by or under a statutory provision.

### **Grant or refusal of permissions**

**29.**—(1) Where an airport is by virtue of Article 28(2) or (3) due to become subject to economic regulation under this Part at the end of the period of either six or nine months referred to in that provision, the airport operator may, at any time after the beginning of that period, make an application to the CAA for the grant in respect of the airport of a permission to levy airport charges.

(2) Any such application—

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- (a) must be in writing and contain such particulars with respect to such matters as the CAA may specify in a notice published in the prescribed manner; and
- (b) must be accompanied by such fee as may be specified in a scheme or regulations made under section 11 of the 1982 Act.

(3) Where an application is made in relation to an airport by the airport operator in accordance with this Article, then, as from the date of the application or the date when the airport becomes subject to economic regulation under this Part (whichever is the later) there shall, by virtue of this paragraph, be deemed for all purposes to be a permission in force under this Part in respect of the airport until such time as—

- (a) the CAA grants a permission in pursuance of the application; or
- (b) the airport operator is notified by the CAA that it has refused the application.

(4) Where—

- (a) any such application has been so made by an airport operator; and
- (b) he has complied with any requirement to produce any documents, or to furnish any accounts, estimates, returns or other information, to the CAA which the CAA may have imposed on him under this Part for the purpose of enabling it to determine whether, and (if so) what, conditions should be imposed under this Part in relation to the airport in question,

the CAA shall grant the application within such period as may be prescribed.

(5) Where—

- (a) any such application has been so made by an airport operator; but
- (b) he has failed to comply with any such requirement as is mentioned in paragraph (4)(b) within such time as may have been allowed for the purpose,

the CAA may, if it thinks fit, allow him further time (not exceeding such period as may be prescribed) to comply with the requirement; and if he has still not complied with it when that further time expires the CAA shall refuse the application.

(6) The grant or refusal of an application made by an airport operator under this Article shall be notified to him in such manner as may be prescribed.

(7) Any permission granted under this Article in respect of an airport shall come into force on whichever is the later of the following dates, namely—

- (a) the date when it is granted; and
- (b) the date when the airport becomes subject to economic regulation under this Part,

and shall remain in force unless and until it is revoked in pursuance of Article 40(9) or the airport ceases to be subject to economic regulation under this Part by virtue of a determination of the Department under Article 28(5) (and shall so remain in force notwithstanding any change of airport operator).

### *Conditions*

#### **Imposition of conditions by CAA**

**30.**—(1) So long as a permission is for the time being in force under this Part in respect of an airport, the airport operator shall comply with such conditions as are for the time being in force in relation to the airport by virtue of the following Articles of this Part.

(2) The CAA shall perform its functions under those Articles in the manner which it considers is best calculated—

- (a) to further the reasonable interests of users of airports within the United Kingdom;

- (b) to promote the efficient, economic and profitable operation of such airports;
- (c) to encourage investment in new facilities at airports in time to satisfy anticipated demands by the users of such airports; and
- (d) to impose the minimum restrictions that are consistent with the performance by the CAA of its functions under those Articles;

and section 4 of the 1982 Act (general objectives of the CAA) shall accordingly not apply in relation to the performance by the CAA of those functions.

(3) In performing those functions the CAA shall take into account such of the international obligations of the United Kingdom as may be notified to it by the Secretary of State for the purposes of section 39 of the Airports Act 1986<sup>F5</sup>.

(4) The duty of an airport operator under paragraph (1) to comply with any such conditions as are there mentioned shall be enforceable in accordance with Articles 39 to 41 (and not otherwise).

(5) Nothing in this Part shall be read as requiring or authorising the CAA to impose or modify any conditions in relation to an airport otherwise than on granting a permission under this Part in respect of it or while any such permission is in force.

(6) Without prejudice to the generality of section 11 of the 1982 Act, a scheme or regulations under that section may make provision for charges to be paid in respect of the performance by the CAA of any of its functions under the following Articles of this Part.

**F5** 1986 c.31

**Modifications etc. (not altering text)**

**C1** Art. 30(2)(3) applied (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 28(2)**

**Mandatory conditions in case of designated airports**

**31.—**(1) Where an airport is designated for the purposes of this Article by an order made by the Department, then (subject to paragraph (9))—

- (a) if the airport is so designated at the time when a permission under this Part is granted in respect of it under Article 29(4), the CAA shall, at the time of granting the permission, impose in relation to the airport such conditions as to accounts and airport charges as are mentioned in paragraphs (2) and (3); and
  - (b) if the airport is so designated at any later time, the CAA shall impose any such conditions in relation to the airport within the period of nine months beginning with the date of the designation.
- (2) The conditions as to accounts referred to in paragraph (1) are—
- (a) such conditions as the CAA considers appropriate to secure that the accounts of the airport operator disclose—
    - (i) any subsidy furnished (whether by the making of loans on non-commercial terms or otherwise) by any person or body to the airport operator in connection with his business so far as consisting of the carrying on of operational activities relating to the airport, and the identity of any such person or authority;
    - (ii) any subsidy so furnished to that business by the airport operator out of funds attributable to any other activities carried on by him;
    - (iii) the aggregate income and expenditure of the airport operator attributable to the levying by him of airport charges at the airport;

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- (iv) the aggregate income and expenditure of the airport operator attributable to operational activities relating to the airport (whether carried on by the airport operator or any other person) being income and expenditure which are taken into account by him in fixing airport charges; and
- (v) where the airport operator has for the time being the management of two or more airports, the aggregate income and expenditure of the airport operator attributable to the business carried on by him at each of those airports; and
- (b) where the accounts of the airport operator are not required to be delivered to the registrar of companies in accordance with the Companies Order, such conditions as the CAA considers appropriate with respect to the publication of those accounts;

and the reference in sub-paragraph (a) to the accounts of the airport operator shall be read as referring to accounts delivered to the registrar of companies in accordance with that Order or published in pursuance of sub-paragraph (b).

(3) The conditions as to airport charges referred to in paragraph (1) are such conditions as the CAA considers appropriate for regulating the maximum amounts that may be levied by the airport operator by way of airport charges at the airport during the period of five years beginning with such date as may be specified by the CAA when imposing the conditions, being a date falling not later than the end of the period of twelve months beginning with the date when the conditions are imposed.

(4) Subject to paragraph (9), the CAA shall—

- (a) at the end of the period of five years specified in paragraph (3); and
- (b) at the end of each succeeding period of five years,

make such modifications in the conditions imposed in pursuance of paragraph (3) (as they are for the time being in force) as it thinks appropriate for regulating during the succeeding period of five years the maximum amounts that may be levied by the airport operator by way of airport charges at the airport; and any reference in this Part to the making of modifications in any such conditions includes a reference to the making of a modification whose effect is merely to extend the application of a particular condition or conditions for a further period of five years.

(5) Without prejudice to the generality of paragraphs (3) and (4), conditions imposed or modified in pursuance of those provisions—

- (a) may provide—
  - (i) for an overall limit on the amount that may be levied by the airport operator by way of all airport charges at the airport; or
  - (ii) for limits to apply to particular categories of charges; or
  - (iii) for a combination of any such limits;
- (b) may operate to restrict increases in any such charges, or to require reductions in them, whether by reference to any formula or otherwise;
- (c) may provide for different limits to apply in relation to different periods of time falling within the period of five years for which the conditions are in force.

(6) Except with the agreement of the airport operator concerned, conditions imposed in pursuance of paragraph (3) shall not be modified by the CAA otherwise than in pursuance of paragraph (4).

(7) The CAA may, if it thinks fit and after consultation with the airport operator concerned, determine, at any time during any period of five years for which conditions under paragraph (3) are in force in accordance with the preceding provisions of this Article, that that period shall be extended by such period (not exceeding twelve months) as may be specified in its determination; and in any such case any reference in this Part to that period shall be read as a reference to that period as extended by virtue of this paragraph.

(8) Where the CAA makes any such determination in the case of conditions providing for different limits to apply in relation to different periods of time, any limit applying in relation to the last of those periods shall apply also in relation to the additional period for which the conditions are to remain in force in accordance with the determination, unless the CAA and the airport operator concerned agree that some other limit shall apply instead.

(9) Before imposing any conditions in pursuance of paragraph (3), or making any modifications in pursuance of paragraph (4), in relation to any airport, the CAA shall, unless the Department otherwise directs, make a reference to the Commission in respect of the airport under Article 34(1).

(10) The Department may by order under this Article either designate particular airports for the purposes of this Article or designate any class of airports for those purposes; and any such class may be framed by reference to annual turnover, as defined in the order, or by reference to any other matter whatever.

VALID FROM 10/11/2011

#### [<sup>F6</sup>Designation of certain regulated airports

**31A.**—(1) The Department must by order designate an airport for the purposes of Article 31 if—

- (a) it is a regulated airport for the purposes of the Airport Charges Regulations 2011, and
- (b) the Department considers that designation is warranted on the basis of a market power examination carried out by the CAA in relation to the airport operator in accordance with Article 31B.

(2) The Department must publish details of the procedure and criteria to be used when deciding whether designation is warranted on that basis.

(3) The procedure and criteria must be relevant, objective and non-discriminatory.

(4) As soon as practicable after deciding whether designation of an airport is required under paragraph (1), the Department must—

- (a) publish a notice setting out the reasons for this decision, and
- (b) send a copy of the notice to the airport operator.

**F6** Arts. 31A, 31B inserted (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), [reg. 25\(4\)](#)

VALID FROM 10/11/2011

#### Market power examinations

**31B.**—(1) The CAA may, whenever it considers appropriate, examine—

- (a) whether an airport operator in relation to a regulated airport has, or is likely to acquire, substantial market power (whether alone or taken with such other persons as the CAA considers relevant), and
- (b) if so, the nature and extent of that power.

(2) The CAA must carry out an examination under paragraph (1) (a “market power examination”) if it is asked to do so by—

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- (a) the Department, or
- (b) a person who appears to the CAA to have a sufficient interest in the examination.
- (3) Paragraph (2) does not apply if—
  - (a) the CAA has previously undertaken a market power examination in relation to the airport operator, and
  - (b) it considers that there has not been a material change of circumstances since the conclusion of that examination.
- (4) As soon as practicable after each market power examination the CAA must—
  - (a) publish a report setting out its findings,
  - (b) send a copy of the report to the persons listed in paragraph (5).
- (5) Those persons are—
  - (a) the airport operator that is the subject of the examination,
  - (b) the Department, and
  - (c) if the examination was carried out in respect to a request from another person, that person.
- (6) In this Article “regulated airport” means an airport which is a regulated airport for the purposes of the Airport Charges Regulations 2011.]

**F6** Arts. 31A, 31B inserted (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 25(4)**

### Discretionary conditions

**32.**—(1) The CAA may, if it thinks fit in the case of any airport which is not a designated airport, impose in relation to the airport such conditions as are mentioned in Article 31(2), either at the time of granting a permission under this Part in respect of the airport or at any other time while it is in force.

(2) Where, at the time of granting a permission under this Part in respect of an airport (whether a designated airport or not) or at any other time while such a permission is in force, it appears to the CAA that the airport operator is pursuing one of the courses of conduct specified in paragraph (3), then (subject to paragraph (6) and Article 33) the CAA may, if it thinks fit, impose in relation to the airport such conditions as it considers appropriate for the purpose of remedying or preventing what it considers are the adverse effects of that course of conduct.

- (3) The courses of conduct referred to in paragraph (2) are—
  - (a) the adoption by the airport operator, in relation to any relevant activities carried on by him at the airport, of any trade practice, or any pricing policy, which unreasonably discriminates against any class of users of the airport or any particular user or which unfairly exploits his bargaining position relative to users of the airport generally;
  - (b) the adoption by the airport operator, in relation to the granting of rights by virtue of which relevant activities may be carried on at the airport by any other person or persons, of any practice which—
    - (i) unreasonably discriminates against persons granted any class of such rights, or any particular grantee of such a right, or unfairly exploits his bargaining position relative to the grantees of such rights generally; or
    - (ii) unreasonably discriminates against any class of persons applying for such rights or any particular applicant, or unreasonably limits the number of such rights that are granted in the case of any particular services or facilities,



- or which has resulted in the adoption by any other person of a practice that does any of those things;
- (c) the fixing by the airport operator of any charges levied by him at the airport in relation to any relevant activities carried on by him there at levels which—
- (i) are insufficient, even after taking into account such other revenues (if any) as are relevant to the fixing of such charges, to cover the costs of providing the services or facilities to which the charges relate or are, in the opinion of the CAA, artificially low; and
  - (ii) materially harm (or are intended materially to harm) the business carried on by an airport operator at any other airport in the United Kingdom.
- (4) In paragraph (3)(c)(i) the reference to levels at which charges are fixed being artificially low is a reference to such levels being significantly lower than they would otherwise have been—
- (a) by reason of any subsidy—
    - (i) furnished by any person or body to the airport operator in connection with his business so far as consisting of the carrying on of operational activities relating to the airport; or
    - (ii) furnished to that business by the airport operator out of funds attributable to any other activities carried out by him, whether by the making of loans on non-commercial terms or otherwise; or
  - (b) where the airport operator is a company, by reason of any conduct on the part of the company which, in the opinion of the CAA, has resulted, or will result, in—
    - (i) a failure by the company to achieve a reasonable return on the capital employed by it in carrying on operational activities relating to the airport; or
    - (ii) a failure by the company to distribute to members of the company a reasonable proportion of the profits available for distribution; or
    - (iii) a failure by the company to reach a level of borrowing which is appropriate having regard to its equity share capital (within the meaning of the Companies Order).
- (5) In determining for the purposes of paragraph (4) what is reasonable or (as the case may be) appropriate in the case of a company, the CAA—
- (a) shall disregard the fact that the relevant conduct on the part of the company was in conformity with any policy for the time being of a person having control over the company; but
  - (b) shall have regard to any circumstances which, in the opinion of the CAA, would affect any company carrying on the business of operating the airport as a commercial undertaking.
- (6) Before imposing any conditions under paragraph (2) in relation to an airport, the CAA shall notify the airport operator concerned of the course of conduct within paragraph (3)(a), (b) or (c) which it appears to the CAA that he is pursuing and of the conditions which the CAA proposes to impose; and if, within such period as may be prescribed, the airport operator notifies the CAA that he objects to its proposals, the CAA—
- (a) shall not proceed with the implementation of those proposals; but
  - (b) may instead make a reference to the Commission in respect of the airport under Article 34(3).
- (7) In this Article “designated airport” means an airport for the time being designated for the purposes of Article 31.

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### **Discretionary conditions: supplementary provisions**

**33.**—(1) Nothing in Article 32(2) shall be read as authorising the CAA to impose under that provision—

- (a) any condition providing for any such overall limit as is mentioned in sub-paragraph (a) (i) of Article 31(5); or
- (b) any condition for regulating the maximum amount that may be levied by an airport operator by means of any particular category of charges levied by him at an airport if the same category of charges is for the time being subject to any limit or limits imposed in pursuance of sub-paragraph (a)(ii) or (iii) of Article 31(5).

(2) The CAA shall, in determining—

- (a) whether an airport operator is pursuing a course of conduct within Article 32(3)(a); or
- (b) (where it determines that an airport operator is pursuing such a course of conduct) whether, and (if so) what, conditions should be imposed by it under Article 32(2) in relation to the airport in question,

take into account any advice given to it by the Secretary of State for the purposes of this paragraph as to practices currently adopted at airports in countries or territories outside the United Kingdom.

(3) Where the CAA receives from any operator of aircraft whose principal place of business is in any such country or territory any representations to the effect that the powers of the CAA under Article 32(2) appear to be exercisable in relation to an airport on the grounds that the airport operator is pursuing a course of conduct within Article 32(3)(a), the CAA shall notify those representations to the Secretary of State for the purpose of enabling him to determine whether to give any advice to the CAA for the purposes of paragraph (2).

### *References to Commission*

#### **References to Commission in relation to imposition or modification of conditions**

**34.**—(1) Where the CAA is, by virtue of Article 31(9) required to make a reference to the Commission under this paragraph in respect of any airport, that reference shall be so framed as to require the Commission to investigate and report on—

- (a) the question as to what are the maximum amounts that should be capable of being levied by the airport operator by way of airport charges at the airport during such period of five years as the CAA may specify in the reference; and
- (b) the questions specified in paragraph (2).

(2) Those questions are—

- (a) whether the airport operator has, at any time during the relevant period, pursued—
  - (i) in relation to any airport charges levied by him at the airport; or
  - (ii) in relation to any operational activities carried on by him and relating to the airport; or
  - (iii) in relation to the granting of a right by virtue of which any operational activities relating to the airport may be carried on by any other person or persons,
 a course of conduct which has operated or might be expected to operate against the public interest; and
- (b) if so, whether the effects adverse to the public interest which that course of conduct has had, or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.

(3) Where the CAA is, by virtue of Article 32(6), authorised to make a reference to the Commission under this paragraph in respect of any airport, that reference shall be so framed as to require the Commission to investigate and report on the questions—

- (a) whether the airport operator has, at any time during the relevant period, pursued the course of conduct referred to in the CAA's notification under Article 32(6); and
- (b) if so, whether any such course of conduct has operated or might be expected to operate against the public interest; and
- (c) if so, whether the effects adverse to the public interest which that course of conduct has had, or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.

(4) The CAA may, at any time, by notice given to the Commission vary any reference under paragraph (3) by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receiving such a notice the Commission shall give effect to the variation.

(5) In determining for the purposes of this Article whether any particular matter has operated, or might be expected to operate, against the public interest, the Commission—

- (a) shall have regard to the objectives specified in sub-paragraphs (a) to (d) of Article 30(2); and
- (b) in the case of a matter relating to the granting of a right by virtue of which any operational activities relating to an airport may be carried on by any person or persons, shall in addition have regard to the following objective, namely the furtherance of the reasonable interests of persons granted such rights.

(6) In this Article “the relevant period”

- (a) in relation to any reference in respect of an airport under paragraph (1), means—
  - (i) in the case of the first reference in respect of that airport under that paragraph, the period of twelve months ending with the date of the reference; and
  - (ii) in the case of any subsequent such reference, the period ending with the date of that reference and beginning with the date of the reference immediately preceding it; and
- (b) in relation to any reference in respect of an airport under paragraph (3), means the period of twelve months ending with the date of the reference.

### **Supplementary provisions relating to references**

**35.—**(1) For the purpose of assisting the Commission in carrying out an investigation on a reference under Article 34, the CAA may—

- (a) in the case of a reference under paragraph (1) of that Article, specify in the reference—
  - (i) any view that the CAA has formed as to what the maximum amounts referred to in sub-paragraph (a) of that paragraph should be;
  - (ii) any course of conduct which, in its opinion, has been pursued by the airport operator in relation to any of the matters specified in paragraph (2)(a) of that Article and has operated, or might be expected to operate, against the public interest;
  - (iii) any effects adverse to the public interest which, in its opinion, any such course of conduct has had or might be expected to have; and
  - (iv) any conditions or modifications of conditions by which, in its opinion, its view as to those maximum amounts could be implemented or (as the case may be) those adverse effects could be remedied or prevented;

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- (b) in the case of a reference under paragraph (3) of that Article, or a variation of such a reference, specify in the reference or variation—
  - (i) any effects adverse to the public interest which, in the opinion of the CAA, any course of conduct specified in the reference or variation has had or might be expected to have; and
  - (ii) any conditions or modifications of conditions by which, in its opinion, those adverse effects could be remedied or prevented.
- (2) It shall be the duty of the CAA, for the purpose of assisting the Commission in carrying out an investigation on any reference under Article 34, to give to the Commission—
  - (a) any information in the possession of the CAA which—
    - (i) it is within the power of the CAA to give; and
    - (ii) relates to matters falling within the scope of the investigation; and
    - (iii) either is requested by the Commission for that purpose or is information that it would in the CAA's opinion be appropriate to give to the Commission for that purpose without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within the power of the CAA to give, in relation to any such matters;

and the Commission shall, for the purpose of carrying out the investigation, take account of any information given to them in pursuance of sub-paragraph (a).

*Paras. (3) and (3A) rep. by 2002 c. 40*

- (4) The CAA shall—
  - (a) publish particulars of any reference under Article 34, and of any variation of such a reference, in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
  - (b) send a copy of the reference or variation to the Department and to the airport operator concerned.

#### **[<sup>F7</sup>References under Article 34: time limits**

**35A.**—(1) Every reference under Article 34 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Commission on a reference under Article 34 shall not have effect (and no action shall be taken in relation to it under Article 37) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the CAA under paragraph (3).

(3) The CAA may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

- (4) No more than one extension is possible under paragraph (3) in relation to the same reference.
- (5) The CAA shall, in the case of an extension made by it under paragraph (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under sub-paragraph (a) to the airport operator concerned and the Department.]

### **References under Article 34: powers of investigation**

**35B.**—(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 34 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.
- (5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

### **Reports on references**

- 36.**—(1) In making a report on any reference under Article 34, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any course of conduct specified in the reference has operated, or might be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which that course of conduct has had or might be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by the imposition of any conditions in relation to the airport in question, or by the modification of any conditions already in force in relation to it, shall specify in the report the conditions that should be imposed or (as the case may be) the modifications that should be made.
- (2) The Commission's conclusions on a reference under Article 34(1) so far as relating to the maximum amounts referred to in sub-paragraph (a) of that provision shall take the form of

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recommendations as to what those maximum amounts should be during the five years in question; and any such recommendations may do any of the things referred to in sub-paragraphs (a) to (c) of Article 31(5).

[<sup>F8</sup>(2A) For the purposes of Article 37(2), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(2B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 34 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

*Para. (3) rep. by 1998 c. 41*

[<sup>F9</sup>(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under Article 34.

(4A) In making any report on a reference under Article 34 the Commission must have regard to the following considerations before disclosing any information.

(4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4C) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(4D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4C)(a) or (b) is necessary for the purposes of the report.]

(5) A report of the Commission on any reference under Article 34 shall be sent to the CAA.

(6) On receiving such a report, the CAA—

- (a) shall send a copy of the report to the Department and to the airport operator concerned; and
- (b) subject to any direction given by the Department under paragraph (7), shall publish the report in such manner as the CAA considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, it may, before the end of the period of 21 days beginning with the day on which it receives the copy of the report, direct the CAA to exclude that matter from the report as published under paragraph (6).

**F8** 2002 c. 40

**F9** 2002 c. 40

### **Imposition or modification of conditions following Commission's report**

**37.—**(1) Where the CAA—

- (a) is required to impose any such conditions as are mentioned in Article 31(3), or to make any such modifications as are mentioned in Article 31(4), in respect of any such maximum amounts as are there mentioned; and
- (b) has received a report made by the Commission under Article 36 and containing their recommendations as to what those maximum amounts should be,

the CAA shall impose any such conditions in accordance with Article 31(3) or make any such modifications in accordance with Article 31(4) (as the case may be).

(2) Where the CAA has received a report of the Commission on a reference under Article 34 and the report—

- (a) includes conclusions to the effect that any course of conduct within the scope of the reference has operated or might be expected to operate against the public interest;
- (b) specifies effects adverse to the public interest which that course of conduct has had or might be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by the imposition of any conditions in relation to the airport in question or by the modification of any conditions already in force in relation to it; and
- (d) specifies conditions or modifications by which those effects could be remedied or prevented,

the CAA shall, subject to paragraph (3), impose such conditions, or make such modifications of any conditions already in force, in relation to the airport in question as the CAA considers appropriate for the purpose of remedying or preventing the adverse effects specified in the report.

(3) In the case of a report of the Commission on a reference under Article 34(1), the Department may, if it thinks fit, direct that, notwithstanding that the report satisfies the requirements of sub-paragraphs (a) to (d) of paragraph (2), the CAA shall not impose any conditions or make any modifications as mentioned in that paragraph.

(4) Before imposing any conditions or making any modifications as mentioned in paragraph (1) the CAA shall have regard to the recommendations referred to in sub-paragraph (b) of that paragraph; and before imposing any conditions or making any modifications as mentioned in paragraph (2) the CAA shall have regard to the conditions or modifications referred to in sub-paragraph (d) of that paragraph.

(5) Where the CAA has imposed any conditions or made any modifications as mentioned in paragraph (1) or (2), it shall publish the following matters, namely—

- (a) particulars of the conditions or modifications in question; and
- (b) in so far as those conditions or modifications do not accord with the recommendations referred to in paragraph (1)(b), or (as the case may be) with the conditions or modifications referred to in paragraph (2)(d), a statement of the CAA's reasons for not implementing the Commission's report,

in such manner as it considers appropriate for the purpose of bringing those matters to the attention of persons likely to be affected by them.

### **Charges to be paid by airport operators in respect of Commission's expenses**

**38.**—(1) The Department may, in accordance with the following provisions of this Article, provide by regulations for annual charges to be payable by airport operators in respect of the expenses incurred by the Commission in carrying out investigations, and reporting, on references to which this paragraph applies.

(2) Paragraph (1) applies to any reference made to the Commission under Article 34 other than a reference under paragraph (1) of that Article which relates to the first period of five years for which any such conditions as are mentioned in Article 31(3) are to be in force in relation to a particular airport.

(3) Any such regulations as are mentioned in paragraph (1) shall—

- (a) require the Commission—

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- (i) to prepare, in such form and including such information as may be prescribed by the regulations, an annual statement containing an assessment of the expenses incurred by it as mentioned in paragraph (1) in the preceding period of twelve months; and
  - (ii) to send a copy of any such statement to the CAA;
  - (b) prescribe the circumstances in which airport operators, being persons having the management of airports in respect of which permissions under this Part are in force, are to be liable to charges under this Article in respect of the expenses of the Commission specified in any such statement;
  - (c) provide that, where a particular airport operator is liable to such a charge, the amount of the charge payable by him shall (subject to sub-paragraph (d)) be a proportion of the expenses referred to in sub-paragraph (b) to be determined by reference to such matters or circumstances as may be specified in the regulations; and
  - (d) prescribe the maximum amount of any charge under this Article.
- (4) Without prejudice to the generality of paragraph (3)(b), any such regulations may provide for an airport operator falling within that provision to be liable to a charge under this Article notwithstanding that none of the expenses there referred to relate to a reference made in respect of an airport managed by him.
- (5) Where by virtue of any such regulations a charge under this Article is payable by any airport operator, the CAA shall notify him that he is required to pay that charge to the CAA; and where an airport operator has been so notified the amount of any such charge shall be recoverable from him as a debt due to the CAA.
- (6) Any sums received by the CAA by virtue of this Article shall be paid to the Secretary of State, who shall then pay them into the Consolidated Fund of the United Kingdom.

#### *Enforcement of conditions*

#### **Breach of conditions other than accounts conditions: complaints and compliance orders**

- 39.—(1) Where—
- (a) a complaint is made to the CAA in relation to any airport that the airport operator is failing to comply, or has failed to comply and is likely again to fail to comply, with any condition in contravention of Article 30(1); and
  - (b) that complaint is made—
    - (i) by any person on whom any airport charges have been levied by the airport operator at the airport (whether actually paid by that person or not); or
    - (ii) by any other airport operator who claims that the business carried on by him at another airport in the United Kingdom has been or is being materially harmed by the alleged failure to comply with the condition in question,
 the CAA shall investigate that complaint (unless the CAA considers that it is frivolous); but nothing in this Article applies to a condition to which any provision of Article 41 applies.
- (2) Where any such complaint is made to the CAA by a person not falling within paragraph (1) (b)(i) or (ii), the CAA may investigate the complaint if it thinks fit.
- (3) If, having investigated any such complaint, the CAA is satisfied that an airport operator is failing to comply, or has failed to comply and is likely again to fail to comply, with any condition in contravention of Article 30(1), the CAA shall either—
- (a) by order make such provision as it considers appropriate for the purpose of securing compliance with that condition and for remedying any loss or damage sustained, or



injustice suffered, by any person in consequence of the failure to comply with that condition; or

- (b) subject to Article 31(6) and paragraph (4), modify the condition in such manner as it considers appropriate in all the circumstances.

(4) The CAA shall not under paragraph (3)(b) modify a condition in such a manner as would permit of the occurrence, or (as the case may be) recurrence, of any effects adverse to the public interest which have been specified by the Commission in a report made by them on any reference under Article 34 in respect of the airport in question.

(5) If, having investigated any such complaint, the CAA is satisfied that an airport operator has failed to comply with any condition in contravention of Article 30(1) (but not that he is for the time being failing to comply with it or is likely again to fail to comply with it) the CAA may by order make such provision as it considers appropriate for remedying any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply with that condition.

- (6) An order under paragraph (3)(a) or (5)—

- (a) shall require the airport operator concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified; and
- (b) shall, as respects any such requirement, take effect (according to the terms of the order) either as soon as a copy of it is served on the airport operator or at such later time as may be specified in it by the CAA; and
- (c) may be revoked by the CAA at any time.

(7) A copy of any such order shall be served by the CAA on the airport operator in the prescribed manner; and references in this and the following Article to the service of a copy of such an order on an airport operator shall be construed accordingly.

### **Validity and effect of compliance orders**

**40.**—(1) If an airport operator is aggrieved by any compliance order applying to him by virtue of Article 39 and desires to question the validity of the order on the ground—

- (a) that the order is not within the powers of that Article; or
- (b) where any regulations under section 7(2) of the 1982 Act provide for regulating the procedure to be followed by the CAA in the performance of its functions under Article 39, that any requirement of those regulations has not been complied with in relation to the order,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.

- (2) On any such application the High Court may, if satisfied—

- (a) that the compliance order is not within the powers of Article 39; or
- (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as is mentioned in paragraph (1)(b),

quash the order or any provision of the order.

(3) Except as provided by this Article, the validity of a compliance order shall not be questioned in any legal proceedings whatever.

(4) No criminal proceedings shall, by virtue of the making of a compliance order, lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.

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(5) The obligation to comply with a compliance order is a duty owed to any person who may be affected by a contravention of it.

(6) Where a duty is owed by virtue of paragraph (5) to any person—

- (a) any breach of the duty which causes that person to sustain loss or damage; and
- (b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result,

shall be actionable at the suit or instance of that person.

(7) In any proceedings brought against any person in pursuance of paragraph (6)(a), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(8) Without prejudice to any right which any person may have by virtue of paragraph (6) (a) to bring civil proceedings in respect of any contravention or apprehended contravention of a compliance order, the CAA may enforce compliance with any such order by civil proceedings for an injunction or for any other appropriate relief.

(9) Where it appears to the CAA that an airport operator has contravened a compliance order and is unlikely to comply with it in the immediate future the CAA may, instead of proceeding under paragraph (8), revoke the permission for the time being in force under this Part in respect of the airport to which the contravention relates.

(10) Where any such permission is revoked by reason of an airport operator's contravention of a compliance order, then (notwithstanding Article 29(4)) a permission shall not again be granted under this Part in respect of the airport in question so long as he remains the airport operator unless it appears to the CAA that, if the CAA were to impose in relation to the airport any condition corresponding to the one whose breach gave rise to the making of the compliance order, he would comply with that condition.

(11) In this Article—

“act”, in relation to any person, includes any failure to do an act which he is under a duty to do and “done” shall be construed accordingly;

“compliance order” means an order under Article 39(3)(a) or (5);

“contravention”, in relation to a compliance order, includes any failure to comply with it.

#### **Modifications etc. (not altering text)**

**C2** Art. 40 modified (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 22(2)**

**C3** Art. 40(4) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 63(1), 94(1), **Sch. 6 para. 26** (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), **art. 2(a)**

#### **Breach of accounts conditions: criminal penalties, etc.**

**41.—(1)** Any airport operator who fails to comply with any condition imposed in accordance with Article 31(2)(a) (in pursuance of either Article 31(1) or Article 32(1)) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) Any airport operator who, in the case of any condition imposed in accordance with Article 31(2)(b) (in pursuance of either Article 31(1) or Article 32(1)), fails to comply with that condition

before the end of the period allowed for compliance with it by virtue of that or any other such condition shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
- (b) on a second or subsequent summary conviction, to a fine of one-tenth of level 5 on the standard scale for each day on which the contravention is continued.

(3) Where an airport operator has failed to comply with any such condition as is mentioned in paragraph (1), then (whether or not proceedings are brought under that paragraph in respect of that contravention) the CAA may impose, in relation to the airport to which the contravention relates, such conditions as the CAA considers appropriate with respect to the publication of any matter to whose non-disclosure the contravention relates; and if the airport operator fails to comply with any condition so imposed before the end of the period allowed for compliance with it by virtue of that or any other such condition he shall be guilty of an offence and liable as mentioned in sub-paragraphs (a) and (b) of paragraph (2).

(4) In any proceedings for an offence under this Article it shall be a defence for the person charged to prove—

- (a) in the case of an offence under paragraph (1), that he took all reasonable steps for securing compliance with the condition in question;
- (b) in the case of an offence under paragraph (2) or (3), that he took all reasonable steps for securing compliance with the condition in question before the end of the period mentioned in that paragraph.

(5) Any reference in this Article to an airport operator failing to comply with a condition is a reference to his failing to do so in contravention of Article 30(1).

### *Supplementary*

#### **Supplementary provisions relating to conditions**

**42.**—(1) Any condition imposed by the CAA under this Part otherwise than in pursuance of Article 31(3) shall (subject to the provisions of this Article and to the continuation in force of a permission under this Part in respect of the airport in question) either remain in force for a particular period or remain in force without limit of time, as the CAA may determine; and when imposing any such condition the CAA shall accordingly either—

- (a) specify the period in question; or
- (b) specify that it is a condition whose duration is unlimited,

as the case may require.

(2) Where the CAA has in the case of any condition specified a period under paragraph (1)(a), the CAA may, if it thinks fit, determine that that period shall be extended by such period as may be specified in its determination.

(3) Where any such conditions as are mentioned in Article 31(2) are in force in relation to an airport, the CAA may at any time modify or revoke those conditions; but the CAA shall not revoke any such conditions otherwise than in connection with replacing them with further conditions unless the conditions revoked were imposed in pursuance of Article 32(1).

(4) Where any such conditions as are mentioned in Article 32(2) are in force in relation to an airport (being conditions imposed otherwise than following a reference to the Commission under Article 34(3)) the CAA may at any time modify or revoke those conditions unless—

- (a) paragraph (5)(a) operates to preclude the modification of the conditions under this paragraph; or

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(b) that provision has previously so operated and the conditions were modified following a reference to the Commission made in pursuance of paragraph (5)(b).

(5) Before making any modifications under paragraph (4) whose object is the more effective securing of the purpose for which the conditions concerned were imposed the CAA shall notify the airport operator concerned of the course of conduct within Article 32(3)(a), (b) or (c) which it appears to the CAA that he is still pursuing and of the modifications which it proposes to make; and, if within such period as may be prescribed, the airport operator notifies the CAA that he objects to its proposals, the CAA—

(a) shall not proceed with the implementation of those proposals; but

(b) may instead make a reference to the Commission in respect of the airport under Article 34(3);

and, in relation to any such reference, Article 34(3) shall have effect as if references to Article 32(6) were references to this paragraph.

(6) Where any conditions have been imposed or modified by the CAA in relation to an airport for the purpose of remedying or preventing any such adverse effects as are mentioned in Article 37(2), the CAA may—

(a) make such modifications or further modifications of those conditions as it considers appropriate; or

(b) revoke the conditions,

as long as the modifications or revocation in question would not permit of the occurrence or (as the case may be) recurrence of any of those adverse effects.

(7) Where under this Part the CAA imposes any condition in relation to an airport or modifies, extends the period of operation of, or revokes, any such condition the CAA shall notify the airport operator of the imposition, modification or revocation of the condition, or (as the case may be) of the extension of the period of its operation, in such manner as may be prescribed.

(8) Where a permission is in force under this Part in respect of an airport, the airport operator shall, if so required by any person and on payment of such reasonable fee as the airport operator may determine, provide that person with a copy of that permission and of any conditions for the time being in force under this Part in relation to the airport.

### **Special provisions relating to groups of airports**

**43.—**(1) Where it appears to the CAA that two or more airports are airports serving the same area and either—

(a) that they are managed by the same airport operator; or

(b) that they are owned by the same person, or by members of the same group of companies, and they operate as a group of airports whose activities are co-ordinated by the airport operators concerned,

any conditions imposed or modified by the CAA in pursuance of Article 31(3) or (4) in relation to any one of those airports may be framed so as to prescribe a limit or limits operating by reference to the aggregate of amounts levied by way of airport charges at that airport and amounts so levied at the other airport or airports.

(2) For the purposes of paragraph (1) a body corporate and each of its subsidiaries shall be treated as members of a group of companies.

(3) In paragraph (1) the reference to airports serving the same area is a reference to airports in the case of which a substantial number of the passengers departing from, or arriving at, the airports by air (other than those interrupting their flights there or transferring from one flight to another) have

as their original points of departure, or (as the case may be) as their ultimate destinations, places situated within the same area.

#### **Functions in relation to permissions and conditions initially exercisable by the Department**

44.—(1) If the Department, at any time during the period of six months beginning with the date of the coming into operation of Article 28, notifies the CAA that it proposes to perform, in relation to any airport which is—

- (a) due to become subject to economic regulation under this Part at the end of that period by virtue of Article 28(2); and
- (b) specified in the notification,

the functions of the CAA specified in paragraph (2), those functions shall (subject to paragraph (4)) be performed in relation to the airport by the Department and not by the CAA, and references to the CAA in the provisions mentioned in paragraph (2) and in Articles 42 and 48 shall, so far as may be necessary for the purpose or in consequence of the transfer of those functions, be read as references to the Department.

(2) The functions of the CAA referred to in paragraph (1) are—

- (a) its functions under Article 29 with respect to the grant or refusal of a permission under this Part; and
- (b) if the airport in question is for the time being designated for the purposes of Article 31, its functions under that Article and Article 43 with respect to the imposition of conditions in accordance with Article 31(1)(a); and
- (c) if the airport in question is not so designated, its functions under Article 32(1) with respect to the imposition of such conditions as are there mentioned at the time of granting a permission under this Part.

(3) If the Department so determines at the time of granting a permission under this Part in respect of an airport in pursuance of this Article, that airport shall, instead of becoming subject to economic regulation under this Part at the end of the period of six months referred to in paragraph (1), become so subject on such earlier date as may be specified by the Department in its determination.

(4) Where functions of the CAA under Article 31 or 32(1) fall to be performed by the Department by virtue of this Article, the Department—

- (a) shall perform those functions in the manner which it considers is best calculated to achieve the objectives specified in sub-paragraphs (a) to (d) of Article 30(2); and
- (b) shall perform those functions with respect to the imposition of conditions in pursuance of Article 31(3) without there having been made any prior reference to the Commission in connection with the imposition of any such conditions.

(5) Where, before a notification is given by the Department under paragraph (1) in the case of an airport, the airport operator has already made an application in accordance with Article 29 to the CAA, then, as from the date when the notification is given—

- (a) the application shall be treated as if it had been so made to the Department; and
- (b) anything previously done by or in relation to the CAA in connection with the application shall be treated as if done by or in relation to the Department;

and any fee paid by him in pursuance of Article 29(2)(b) shall be refunded to him by the CAA.

(6) The CAA shall provide such advice, assistance and information to the Department as the Department may require in connection with the performance by the Department of any functions under this Part (whether by virtue of this Article or otherwise).

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### Orders under the 1973 Act or 1980 Act modifying or revoking conditions

**45** <sup>F10</sup>.—<sup>F11</sup>(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of any relevant conditions to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by an airport operator; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by an airport operator; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the carrying on of any operational activities relating to one or more than one airport.]

(2) In paragraph (1) “relevant conditions” means any conditions for the time being in force under this Part other than any conditions imposed or modified in pursuance of Article 31(3) or (4).

*Para. (3) rep. by 2002 c. 40*

<sup>F11</sup>(4) Expressions used in paragraph (1A) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.]

**F10** mod. by SI 2003/1592

**F11** 2002 c. 40

### Application of Part IV to associated companies of airport operators

**46.** Schedule 6 shall have effect with respect to the application of the preceding provisions of this Part to associated companies of airport operators.

### Co-ordination of exercise of functions by CAA and Director General of Fair Trading

**47.** The Department may by regulations make such provision as it thinks expedient—

- (a) for the purpose of regulating—
  - (i) the performance by the CAA of functions under this Part; and
  - (ii) the performance by<sup>F12</sup> the Office of Fair Trading of functions under the Enterprise Act 2002],

in cases where, apart from the regulations, such functions would be authorised or required to be performed by the CAA and<sup>F12</sup> the Office of Fair Trading] respectively in relation to the same matter; and

- (b) for the purpose of prescribing the procedure to be followed in such cases by the CAA and<sup>F12</sup> the Office of Fair Trading].

**F12** 2002 c. 40

## **Furnishing of information, etc. to CAA**

**48.**—(1) The CAA may by notice in writing served on any person require him at such time or times as may be specified in the notice—

- (a) to produce to the CAA such documents or descriptions of documents specified in the notice; and
- (b) to furnish to the CAA, in such form as may be specified in the notice, such accounts, estimates, returns or other information,

as the CAA may reasonably require for the purpose of performing its functions under this Part or for the purpose of giving any advice, assistance or information to the Department in connection with the performance by the Department of any functions under this Part.

(2) A person shall not by virtue of paragraph (1) be compelled—

- (a) to produce any documents which he could not be compelled to produce in civil proceedings before the High Court; or
- (b) in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(3) Any person who fails without reasonable excuse to comply with the requirements of a notice served on him under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who, in purported compliance with the requirements of any such notice, knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **Modifications etc. (not altering text)**

**C4** Art. 48 modified (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 30(2)**

**C5** Art. 48(3)(4) applied (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 5(8)**

## **Restriction on disclosure of information**

**49.**—(1) Subject to the following provisions of this Article, no information with respect to any particular business which has been obtained under the provisions of this Part shall, so long as the business continues to be carried on, be disclosed without the consent of the person for the time being carrying it on.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance of any functions under this Order or any of the statutory provisions specified in paragraph (3) of any Minister of the Crown, any Northern Ireland department, the head of any such department, the CAA, the Commission,<sup>[F13]</sup> the Office of Fair Trading], the Director General of Water Services, the Director General of Electricity Supply, the Director General of Electricity Supply for Northern Ireland<sup>[F14]</sup>, the Director General of Gas for Northern Ireland] or a district council;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (c) for the purposes of any civil proceedings brought under this Part or any of the statutory provisions specified in paragraph (3);

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- (d) in pursuance of any Community obligation.
- (3) The statutory provisions referred to in paragraph (2) are—
- (a) the Trade Descriptions Act 1968<sup>F15</sup>;
  - (b) the 1973 Act;
  - (c) the Consumer Credit Act 1974<sup>F16</sup>;
- Sub#paras. (d)(e) rep. by SI 2000/311*
- (f) the Estate Agents Act 1979<sup>F17</sup>;
  - (g) the 1980 Act;
  - (h) the 1982 Act and any Order in Council made under section 60 of that Act (Air Navigation Orders);
  - (i) the Airports Act 1986<sup>F18</sup>;
  - (j) the Consumer Protection Act 1987<sup>F19</sup>;
  - (k) the Consumer Protection (Northern Ireland) Order 1987<sup>F20</sup>;
  - (l) the Control of Misleading Advertisements Regulations 1988<sup>F21</sup>;
  - (m) the Electricity Act 1989<sup>F22</sup>;
  - (n) the Water Industry Act 1991<sup>F23</sup>;
  - (o) the Water Resources Act 1991<sup>F24</sup>;
  - (p) the Electricity (Northern Ireland) Order 1992<sup>F25</sup>.
- [<sup>F14</sup>(q) the Gas (Northern Ireland) Order 1996.]
- [<sup>F26</sup>(r) [<sup>F27</sup>the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001].]
- [<sup>F28</sup>(s) the Competition Act 1998.]
- [<sup>F29</sup>(t) the Enterprise Act 2002]
- (4) Nothing in paragraph (1) shall be construed—
- (a) as limiting the matters which may be included in, or made public as part of, a report of the Commission under Article 36; or
  - (b) as applying to any information which has been made public as part of such a report.
- (5) Any person who discloses any information in contravention of this Article shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

<b>F13</b>	2002 c. 40
<b>F14</b>	1996 NI 2
<b>F15</b>	1968 c.29
<b>F16</b>	1974 c.39
<b>F17</b>	1979 c.38
<b>F18</b>	1986 c.31
<b>F19</b>	1987 c.43
<b>F20</b>	1987 NI 20
<b>F21</b>	SI 1988/915
<b>F22</b>	1989 c.29



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- F23** [1991 c.56](#)
- F24** [1991 c.57](#)
- F25** [1992 NI 1](#)
- F26** [SI 1996/2199](#)
- F27** [SI 2001/2916](#)
- F28** [SI 1999/506](#)
- F29** [2002 c. 40](#)

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