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STATUTORY INSTRUMENTS

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**2011 No. 2491**

**The Airport Charges Regulations 2011**

**PART 7**

**Designation under the Airports Act 1986 etc.**

**Examination of competition under the Airports Act 1986**

**23.**—(1) Part 4 of the 1986 Act (economic regulation of airports) is amended as follows.

(2) In section 36(1) (interpretation of Part 4)(1)—

(a) in the definition of “airport charges” for the words from “but excluding” to “1982” substitute “but excluding excepted charges”, and

(b) in the appropriate place insert—

““excepted charges” means—

- (a) penalties payable by virtue of section 38C of the 1982 Act (breach of noise control schemes);
- (b) penalties payable by virtue of section 78A of the 1982 Act (penalty schemes established by managers of aerodromes);
- (c) charges payable for services provided for airport users as described in the Annex to Council Directive [96/67/EC](#) of 15th October 1996 on access to the groundhandling market at Community airports;
- (d) charges payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services);
- (e) charges referred to in Regulation [\(EC\) No. 1107/2006](#) of the European Parliament and of the Council of 5th July 2006 which are levied for the funding of assistance to disabled passengers and passengers with reduced mobility; and
- (f) charges for en route and terminal air navigation services determined in accordance with Chapter III of [Commission Regulation \(EC\) No. 1794/2006](#) of 6th December 2006 laying down a common charging scheme for air navigation services, as amended by Commission Regulation (EU) No. 1191/2010 of 16th December 2010;”.

(3) In section 40 (mandatory conditions in case of designated airports)(2), in subsection (1), after “State” insert “(either in accordance with section 40A or otherwise)”.

(4) After that section insert—

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(1) Section 36(1) was amended by the Transport Act 2000 (c. 38), Sch. 8, paragraph 10, and by the Civil Aviation Act 2006 (c. 34), Sch. 2, paragraph 5; there are other amendments but none is relevant to the effect of these Regulations.

(2) Section 40 has been amended in a way which is not relevant to the effect of these Regulations.

**“40A Designation of certain regulated airports**

- (1) The Secretary of State must by order designate an airport for the purposes of section 40 if—
  - (a) it is a regulated airport for the purposes of the Airport Charges Regulations 2011, and
  - (b) the Secretary of State 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 section 40B.
- (2) The Secretary of State 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 subsection (1), the Secretary of State must—
  - (a) publish a notice setting out the reasons for this decision, and
  - (b) send a copy of the notice to the airport operator.

**40B Market power examinations**

- (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 subsection (1) (a “market power examination”) if it is asked to do so by—
  - (a) the Secretary of State, or
  - (b) a person who appears to the CAA to have a sufficient interest in the examination.
- (3) Subsection (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 subsection (5).
- (5) Those persons are—
  - (a) the airport operator that is the subject of the examination,
  - (b) the Secretary of State, and
  - (c) if the examination was carried out in response to a request from another person, that person.
- (6) In this section “regulated airport” means an airport which is a regulated airport for the purposes of the Airport Charges Regulations 2011.”.

### **Transitional provision**

**24.**—(1) The amendments made by regulation 23(2) do not affect the validity of conditions imposed by the CAA in relation to an airport under Part 4 of the 1986 Act before 10th November 2011.

(2) But, on and after that date, references in such conditions to airport charges are to be treated as references to airport charges as defined in section 36(1) of the 1986 Act, as amended by regulation 23(2).