

STATUTORY INSTRUMENTS

1994 No. 426

The Airports (Northern Ireland) Order 1994

PART IV

ECONOMIC REGULATION OF AIRPORTS

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^{F1}.

(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.

F1 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)**

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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;
 - (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 [F²the Companies Act 2006], 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

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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.

F2 Words in art. 31(2)(b) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), [Sch. 1 para. 197\(2\)](#) (with arts. 6, 11, 12)

VALID FROM 10/11/2011

^{F3}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

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- (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.

F3 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—
- (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.]

F3 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

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- (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 [^{F4}the Companies Acts: see section 548 of the Companies Act 2006]).
- (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.

F4 Words in art. 32(4)(b)(iii) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 149\(3\)](#) (with art. 10)

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,

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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).

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