



# Transport Act 2000

## 2000 CHAPTER 38

### PART I

#### AIR TRAFFIC

#### CHAPTER I

#### AIR TRAFFIC SERVICES

#### *Modification of licences*

### **11 Modification by agreement**

- (1) The CAA may modify the conditions of a licence if its holder consents to the modifications.
- (2) Before making modifications under this section the CAA must—
  - (a) publish a notice in such manner as the CAA thinks appropriate for bringing it to the attention of persons likely to be affected by the making of the modifications,
  - (b) serve a copy of the notice on the licence holder,
  - (c) send a copy of the notice to the Secretary of State, and
  - (d) consider any representations made in accordance with the notice.
- (3) The notice must—
  - (a) state that the CAA proposes to make the modifications and state their effect and the reasons for so proposing, and
  - (b) state the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposed modifications.

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- (4) If within the period stated under subsection (3)(b) the Secretary of State gives a direction to the CAA requiring it not to make the modifications the CAA must comply with the direction.
- (5) As soon as practicable after making modifications under this section the CAA must send a copy of them to the licence holder and a copy to the Secretary of State.

## 12 References to Competition Commission

- (1) The CAA may make to the Competition Commission a reference requiring the Commission to investigate and report on—
  - (a) whether any matters which are specified in the reference and which relate to the provision of air traffic services by or on behalf of a licence holder operate against the public interest or may be expected to do so;
  - (b) if so, whether the effects adverse to the public interest which the matters have or may be expected to have could be remedied or prevented by modifying the conditions of the licence.
- (2) The CAA may at any time by notice given to the Commission vary a reference by adding to the matters specified in it or by excluding from it one or more of those matters; and on receiving a notice the Commission must give effect to the variation.
- (3) To help the Commission in its investigation the CAA may specify in the reference or a variation of it—
  - (a) any effects adverse to the public interest which in its opinion the matters specified in the reference or variation have or may be expected to have;
  - (b) any modifications of the conditions of the licence by which in its opinion those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference or variation the CAA must—
  - (a) serve a copy of the reference or variation on the licence holder;
  - (b) publish particulars of the reference or variation in such manner as the CAA considers appropriate for bringing it to the attention of persons likely to be affected by it;
  - (c) send a copy of the reference or variation to the Secretary of State.
- (5) If before the end of the period of 28 days starting with the day on which the Secretary of State receives the copy he gives a direction to the Commission requiring it not to proceed with the reference or not to give effect to the variation, the Commission must comply with the direction.
- (6) To help the Commission in its investigation the CAA must give to the Commission—
  - (a) any information the CAA has which relates to matters within the scope of the investigation and which the Commission requests;
  - (b) any information the CAA has which relates to matters within the scope of the investigation and which the CAA thinks it would be appropriate for it to give without a request;
  - (c) any other help which the CAA is able to give in relation to matters within the scope of the investigation and which the Commission requests.
- (7) In carrying out the investigation concerned the Commission must take account of any information given under subsection (6).

- (8) In deciding under this section whether a matter operates, or may be expected to operate, against the public interest the Commission must have regard to the matters as respects which duties are imposed on the Secretary of State and the CAA by sections 1 and 2.
- (9) The provisions listed in subsection (10) apply to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under Parts IV, V, VI and VIII of the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act references to the Secretary of State were to the CAA and the reference to three months were to six months.
- (10) The provisions are—
- (a) sections 70, 85 and 93B of the 1973 Act (time limit for report; witnesses and documents; and false or misleading information);
  - (b) section 24 of the Competition Act 1980 (modification of provisions about Commission’s general functions);
  - (c) Part II of Schedule 7 to the Competition Act 1998 (Commission’s general functions).
- (11) The 1973 Act is the Fair Trading Act 1973.

### **13 Reports on references**

- (1) In making a report on a reference under section 12 the Competition Commission—
- (a) must include definite conclusions on the questions contained in the reference and such an account of its reasons for the conclusions as in its opinion facilitates a proper understanding of the questions and of the conclusions;
  - (b) if it concludes that any of the matters specified in the reference operate against the public interest or may be expected to do so, must specify the effects adverse to the public interest which the matters have or may be expected to have;
  - (c) if it concludes that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, must specify modifications by which the effects could be remedied or prevented.
- (2) Section 82 of the Fair Trading Act 1973 (general provisions as to reports) applies to reports of the Commission on references under section 12 as it applies to reports of the Commission under that Act.
- (3) A report of the Commission on a reference under section 12 must be made to the CAA.
- (4) The CAA—
- (a) must on receiving such a report send a copy to the licence holder and a copy to the Secretary of State;
  - (b) must, after the end of the specified period, publish the report in such manner as the CAA considers appropriate for bringing it to the attention of persons likely to be affected by it.
- (5) But if the Secretary of State thinks that the publication of any matter would be against the public interest or any person’s commercial interests, he may before the end of the

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specified period give a direction to the CAA requiring it to exclude the matter from every copy of the report to be published as mentioned above.

- (6) The specified period is the period of 14 days starting with the day after the Secretary of State receives the copy under subsection (4).

#### **14 Modification following report**

- (1) This section applies if a report of the Competition Commission on a reference under section 12—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate against the public interest or may be expected to do so,
  - (b) specifies effects adverse to the public interest which the matters have or may be expected to have,
  - (c) includes conclusions to the effect that the effects could be remedied or prevented by modifications of the conditions of the licence, and
  - (d) specifies modifications by which the effects could be remedied or prevented.
- (2) The CAA must suggest such modifications of the conditions of the licence as it thinks are needed to remedy or prevent the adverse effects specified in the report.
- (3) Before suggesting modifications the CAA must—
- (a) have regard to the modifications specified in the report,
  - (b) publish a notice in such manner as the CAA thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the making of the modifications,
  - (c) serve a copy of the notice on the licence holder, and
  - (d) consider any representations made in accordance with the notice (and not withdrawn).
- (4) The notice must—
- (a) state that the CAA proposes to suggest the modifications and state their effect and the reasons for so proposing, and
  - (b) state the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposals.
- (5) If the CAA suggests modifications under this section it must—
- (a) give notice to the Commission setting out the modifications it suggests and the reasons for its suggestions, and
  - (b) send to the Commission copies of any representations made in accordance with the notice published under subsection (3) (and not withdrawn).

#### **15 Commission's power to give direction**

- (1) This section applies if the Competition Commission is given notice under section 14.
- (2) Within the permitted period the Commission may give a direction to the CAA—
- (a) not to make the modifications set out in the notice, or
  - (b) not to make such of those modifications as are specified in the direction.

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- (3) But the Commission may give a direction only if it thinks the modifications set out in the notice are not the modifications which are needed to remedy or prevent the adverse effects specified in the Commission's report on the reference under section 12.
- (4) If the Commission gives a direction it must—
  - (a) publish a notice in such manner as the Commission thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the direction, and
  - (b) serve a copy of the notice on the licence holder.
- (5) The notice must set out—
  - (a) the modifications set out in the notice given under section 14,
  - (b) the direction, and
  - (c) the reasons for giving the direction.
- (6) If the permitted period expires without a direction being given under subsection (2) the CAA must make the modifications set out in the notice given under section 14.
- (7) If within the permitted period a direction is given under subsection (2)(b) the CAA must make the modifications which are—
  - (a) set out in the notice given under section 14, and
  - (b) not specified in the direction.
- (8) As soon as practicable after making modifications under this section the CAA must send a copy of them to the licence holder and a copy to the Secretary of State.
- (9) The permitted period is the period of four weeks starting with the day the Commission is given notice under section 14.
- (10) But if within that period—
  - (a) the Commission applies to the Secretary of State to extend it to six weeks, and
  - (b) he directs that it is to be so extended,the permitted period is the period of six weeks starting with the day the Commission is given notice under section 14.

## **16 Position where Commission gives direction**

- (1) This section applies if the Competition Commission gives a direction under section 15(2).
- (2) If the direction is given under section 15(2)(a) the Commission must itself make such modifications of the conditions of the licence as it thinks are needed to remedy or prevent the adverse effects specified in the Commission's report on the reference under section 12.
- (3) If the direction is given under section 15(2)(b) the Commission must itself make such modifications of the conditions of the licence as it thinks are needed to remedy or prevent such of the adverse effects as—
  - (a) are specified in the Commission's report on the reference under section 12, and
  - (b) would not be remedied or prevented by the modifications set out in the notice under section 14 and not specified under section 15(2)(b).

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- (4) Before making modifications under this section the Commission must—
  - (a) publish a notice in such manner as the Commission thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the making of the modifications,
  - (b) serve a copy of the notice on the licence holder and a copy on the CAA, and
  - (c) consider any representations made in accordance with the notice (and not withdrawn).
- (5) The notice must—
  - (a) state that the Commission proposes to make the modifications and state their effect and the reasons for so proposing, and
  - (b) state the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposed modifications.
- (6) As soon as practicable after making modifications under this section the Commission must—
  - (a) publish a notice in such manner as the Commission thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the modifications, and
  - (b) serve a copy of the notice on the licence holder, a copy on the Secretary of State and a copy on the CAA.
- (7) The notice under subsection (6) must—
  - (a) state that the modifications have been made,
  - (b) set them out, and
  - (c) set out the reasons for making them.

## **17 Commission’s duty as to modifications under section 16**

- (1) The Competition Commission must exercise its functions under section 16(2) and (3) so as to maintain a high standard of safety in the provision of air traffic services; and that duty is to have priority over the application of subsections (2) to (5).
- (2) The Commission must exercise its functions under section 16(2) and (3) in the manner it thinks best calculated—
  - (a) to further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them;
  - (b) to promote efficiency and economy on the part of licence holders;
  - (c) to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences;
  - (d) to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification) and notified to the Commission by the CAA;
  - (e) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after the coming into force of this section and notified to the Commission by the CAA.
- (3) The only interests to be considered under subsection (2)(a) are interests regarding the range, availability, continuity, cost and quality of air traffic services.

- (4) The reference in subsection (2)(a) to furthering interests includes a reference to furthering them (where the Commission thinks it appropriate) by promoting competition in the provision of air traffic services.
- (5) If in a particular case there is a conflict in the application of the provisions of subsections (2) to (4), in relation to that case the Commission must apply them in the manner it thinks is reasonable having regard to them as a whole.
- (6) The Commission must exercise its functions under section 16(2) and (3) so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions.

## **18 Sections 15 and 16: general**

- (1) The provisions listed in subsection (2) apply in relation to the exercise by the Commission of its functions under section 15 or 16 as if—
  - (a) references in section 82(1) and (2) of the 1973 Act to a report of the Commission under that Act were references to a notice under section 15(4) or 16(4) or (6) above;
  - (b) references in section 85 of the 1973 Act to an investigation on a reference made to the Commission under that Act were references to an investigation by the Commission for the purposes of exercising its functions under section 15 or 16 above;
  - (c) the reference in section 93B of the 1973 Act to the Commission's functions under Part IV, V, VI or VIII of that Act were a reference to its functions under section 15 or 16 above.
- (2) The provisions are—
  - (a) sections 82(1) and (2) of the 1973 Act (exclusion of certain matters and absolute privilege);
  - (b) section 85 of the 1973 Act (witnesses and documents);
  - (c) section 93B of the 1973 Act (false or misleading information);
  - (d) section 24 of the Competition Act 1980 (modification of provisions about Commission's general functions);
  - (e) Part II of Schedule 7 to the Competition Act 1998 (Commission's general functions).
- (3) The 1973 Act is the Fair Trading Act 1973.

## **19 Modification by order under other enactments**

- (1) This section applies if—
  - (a) the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the 1973 Act, and
  - (b) the first or second requirement (set out below) is satisfied.
- (2) The first requirement is that—
  - (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference), and
  - (b) the monopoly situation exists in relation to the provision of air traffic services.

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- (3) The second requirement is that the circumstances are as mentioned in section 73(1) of the 1973 Act (order on report on merger reference) and—
  - (a) at least one of the two or more enterprises which ceased to be distinct enterprises was engaged in the provision of air traffic services, or
  - (b) at least one of the two or more enterprises which would cease to be distinct enterprises (in the application of section 73(1) by virtue of section 75(4)(e)) is engaged in the provision of air traffic services.
- (4) The order mentioned in subsection (1) may also provide for the modification of the conditions of a licence to such extent as the Secretary of State thinks necessary or expedient to give effect to or take account of any provision made by the order.
- (5) As soon as practicable after making modifications under this section the Secretary of State must send a copy of them to the licence holder and a copy to the CAA.
- (6) Expressions used in this section and the 1973 Act have the same meanings in this section as in that Act.
- (7) The 1973 Act is the Fair Trading Act 1973.