

**EXPLANATORY MEMORANDUM TO  
THE AERODROMES (DESIGNATION) (DETENTION AND SALE OF  
AIRCRAFT) (ENGLAND AND WALES) ORDER 2009**

**2009 No. 2350**

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order consolidates existing designation orders made under section 88 of the Civil Aviation Act 1982. In addition, the order designates Bristol (Filton), Carlisle, Doncaster/Sheffield, Farnborough, Manston, Oxford and Wolverhampton for the purposes of section 88 of the Civil Aviation Act 1982.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 Section 88 of the Civil Aviation Act 1982 grants powers to certain aerodrome authorities to detain and sell aircraft for unpaid charges. Section 88(10) restricts the application of the section to any aerodrome owned or managed by any Government department or a local authority, and to any other aerodrome designated for the purpose of the section by an order made by the Secretary of State. The "aerodrome authority" is the person owning or managing the aerodrome.

**5. Territorial Extent and Application**

5.1 This instrument extends to England and Wales.

**6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

• *What is being done and why*

7.1 Section 88 of the Civil Aviation Act 1982 confers on an aerodrome authority the power to detain and sell aircraft in certain circumstances where airport charges have not been paid.

- 7.2 Normally, where payment of charges is overdue, aerodrome authorities will pursue payment in the same way as any other business. However, it is in the nature of the civil aviation business that some debtors are not easily accessible. Where an aircraft is detained by an aerodrome authority the likely outcome is that the unpaid charges will be settled promptly. These powers should only be used when all other means open to the aerodrome operator have failed.
- 7.3 Over the last five years the Civil Aviation Authority (“the CAA”) has detained 30 aircraft to secure payment of overdue charges. No aircraft have been sold and all outstanding revenue has been collected.
- 7.4 The designation of an aerodrome under section 88(10) is, as a matter of practice rather than law, in consultation with the CAA and the aerodrome operator. The majority of designations have been made since 1986, when the passing of the Airports Act 1986 led progressively to the exclusion of most major airports from the other categories listed in section 88(10).
- 7.5 Before designating an aerodrome the Department would wish to satisfy ourselves that the aerodrome operator has a need for designation and has appropriate credit control arrangements. The Department wishes to be satisfied that an aerodrome operator has an effective credit control system, which makes provision for reminders and warnings as necessary such that debts will rarely build up in practice. In the event that debts do accumulate any detention action against the airline will not be a surprise but will be part of a measured system.

- ***Consolidation***

- 7.6 This Order consolidates the existing designation orders made by the Secretary of State as regards aerodromes in England and Wales. It also designates Bristol (Filton), Carlisle, Doncaster/Sheffield, Farnborough, Manston, Oxford and Wolverhampton as aerodromes to which section 88 applies.

## **8. Consultation outcome**

- 8.1 A limited consultation was carried out in respect of this instrument. We consulted Bristol (Filton), Carlisle, Doncaster/Sheffield, Farnborough, Manston, Oxford and Wolverhampton airports, six aviation associations and the CAA. As regards each of the newly designated airports, we asked how much revenue had been lost due to unpaid charges. Two responses were received, which stated that the lost revenue totalled £239,000 over the last 10 years. None of the airports objected to designation and we received only three responses from the other consultees. None raised any objections.
- 8.2 We additionally asked the CAA how much revenue had been lost in unpaid air navigation services charges. We did so because the Civil Aviation Authority’s powers to recover such charges may be exercised

on any occasion when the aircraft is on any aerodrome to which Section 88 of the 1982 Act applies.

- 8.3 Although the number of detentions carried out by the CAA is relatively small, averaging 6 per year, in cases where the normal credit control process has been unsuccessful the threat of detention is a highly effective tool in recovering unpaid air navigation services charges. If, as result of the designation of Bristol (Filton), Carlisle, Doncaster/Sheffield, Farnborough, Manston, Oxford and Wolverhampton airports, the CAA is able to effect one detention every three years in respect of unpaid air navigation services charges, the potential annual benefit would be circa £70k. In this context, the CAA had no objections to these aerodromes being designated.
- 8.4 The six aviation related stakeholders consulted had no objections to the proposals.
- 8.5 A full consultation was not carried out as the airport designations proposed will not impose any significant additional costs on the private and public sectors.

## **9. Guidance**

- 9.1 A Departmental guidance note will be provided to those airports that have been newly designated and given the power to detain aircraft and will also be available to those that have been consolidated from existing designation orders. It contains information on the action that the Department is prepared to take to assist in securing the payment of airport charges.

## **10. Impact**

- 10.1 The impact on charities or voluntary bodies is negligible. As regards the impacts on business, designation gives aerodromes the power to detain and sell aircraft in certain circumstances where airport charges have not been paid. As such it does not constitute a regulatory burden on those aerodromes; it is for the aerodrome operator to decide when to use the powers of detention. The detention of an aircraft is a serious measure and in the case of a foreign aircraft the repercussions may be complex and commercially uncertain. The Department's advice therefore is that aerodrome operators should regard the powers to detain aircraft as powers to be used only when all other available means have failed.
- 10.2 The impact on the public sector is negligible
- 10.3 An Impact Assessment has not been prepared for this instrument as there are no costs or benefits to business.

## **11. Regulating small business**

11.1 None of the airports newly designated under this Order is a small business. The airports newly designated by this Order (Bristol (Filton), Carlisle, Doncaster/Sheffield, Farnborough, Manston, Oxford and Wolverhampton) are content for the Regulations to be made.

## **12. Monitoring & review**

12.1 The intention of this instrument is to consolidate the existing airport designation orders made under section 88 of the Civil Aviation Act 1982 and to additionally designate the above mentioned airports with powers under section 88 to detain and sell aircraft in certain circumstances where airport charges have not been paid to the aerodrome operator.

12.2 The Department has no current intention to review the existing or new designations. The Department does not monitor the use of the detention powers at airports, but, through its regular communication with relevant stakeholders, it is notified of any issues of concern to airports and aircraft operators. Moreover, before formally threatening the use of detention powers against a foreign airline, the Department would expect to be notified so that, if appropriate, representations can be made to the airline on behalf of the aerodrome operator.

## **13. Contact**

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