

<b>Title: Airport Charges Regulations 2011</b>  <b>PIR No: DfTPIR0045</b>  <b>Lead department or agency: Department for Transport</b>  <b>Other departments or agencies: Civil Aviation Authority</b>  Contact for enquiries: <b>AirportsPolicy@dft.gov.uk</b>	<b>Post Implementation Review</b>
	<b>Date: 10/11/2021</b>
	<b>Type of regulation: EU</b>
	<b>Type of review: Statutory</b>
	<b>Date measure came into force: 10/11/2011</b>
	<b>Recommendation: Keep</b>
	<b>RPC Opinion: Green</b>

### 1. What were the policy objectives of the measure?

In 2009 the European Commission introduced European Directive 2009/12/EC, commonly known as the Airport Charges Directive, to establish a common EU regulatory framework for airport charges. The UK transposed this into UK law via the Airport Charges Regulations 2011 (ACRs), using a ‘copy-out’ approach wherever possible in accordance with existing UK government policy.

The ACRs:

- set out common principles of transparency and consultation for airports in determining the charges levied on airlines;
- stipulate that airport charges should be non-discriminatory; and
- allow differentiated charges based on relevant, objective, transparent and non-discriminatory criteria.

The ACRs apply to airports with over 5 million passengers per annum (mppa) and were intended to ensure transparency and consultation in the levying of charges by the operators of major airports on their airline customers.

### 2. What evidence has informed the PIR?

The Civil Aviation Authority (as the independent supervisory authority for the ACRs) produced its most recent [ACR Report](#) on the exercise of its functions under the ACRs earlier this year covering the period from 1 April 2017 to 31 March 2021 which was used to inform our assessment.<sup>1</sup> The CAA reported that it had not received any formal complaints that an airport operator had not complied with an obligation under the ACRs, nor had it investigated whether an airport operator was failing to comply, or had failed to comply, with an obligation under the ACRs during the period of the report. Where it became aware of informal concerns regarding airport operators’ compliance with the ACRs, it had encouraged parties to resolve disputes through dialogue.

In addition, in June 2021 a questionnaire was issued by the Department to all airports within the scope of the ACRs and those that fall just below the 5mppa threshold, airlines operating out of the UK (including British Airways, Virgin Atlantic, easyJet, Wizz Air and Ryanair), as well as trade bodies, requesting their views on the operation and the effectiveness of the ACRs. Responses were received from 9 parties. Airports generally argued that the ACRs worked well and did not impose a significant financial burden. Some airlines argued that the ACRs should be strengthened to further enhance transparency and consultation at some airports. There were

<sup>1</sup> The Airport Charges Regulations: Reporting under Regulation 32, CAP 2183, CAA, June 2021.

some suggestions from airports that the passenger-number threshold above which the ACRs apply could be raised.

### **3. To what extent have the policy objectives been achieved?**

The policy objectives appear to have been broadly achieved: a common framework is in place and in use across the UK's regulated airports; there have been no formal complaints of discrimination; there generally appears to have been effective consultation around airport charges; and there is transparency of charges. In their 2021 report, the CAA highlight that they have not received any formal complaints that an airport operator has not complied with an obligation under the ACRs, nor have they investigated whether an airport operator was failing to comply, or has failed to comply, with an obligation under the ACRs during the period the report covers.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: Robert Courts MP

Date: 29 December 2021

A handwritten signature in black ink, appearing to read 'Robert Courts'.

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### **4. What were the original assumptions?**

The ACRs were not thought to be risky or contentious, as the majority of UK airports already had similar processes in place since before the implementation of European Directive 2009/12/EC. As a result, the ACRs were not particularly novel or untested.

According to the Explanatory Memorandum relating to the ACRs published in 2011<sup>2</sup>, the total cost of the ACRs was estimated at £1.635 million per year but it was expected that it may vary with fluctuations in the number of airports which are subject to regulation and the number of investigations undertaken by the CAA. Based on the responses to the Department's questionnaire, and the CAA's latest ACR report, referenced earlier, we consider it unlikely that this cost estimate will have been exceeded.

### **5. Were there any unintended consequences?**

The objectives of the ACRs appear to have been met with no overall unintended effects. One point to note, as previously stated, is that the ACRs apply to all airports with over 5 mppa, which are defined as "regulated airports". As per the ACRs, this is calculated based on the annual number of passengers, two years prior to the current year. Considering passenger numbers for 2019, this means 13 UK airports are required to meet the ACRs for 2021. However, due to the impact of Covid-19 on passenger numbers, in 2020, only 5 UK airports will be covered by the ACRs in 2022. Significant changes like this from year-to-year in the number of airports covered by the ACRs may not be desirable; however, it is expected to be a short-term effect arising from the disruption to air traffic caused by the Covid-19 pandemic.

### **6. Has the evidence identified any opportunities for reducing the burden on business?**

This PIR found that the ACRs are generally working well in the UK and its objectives have been met. The original objectives of the legislation remain relevant and were generally supported by respondents, both airlines and airports, and it is proposed that the ACRs are retained in their present form for now. Feedback from relevant stakeholders suggest the financial burden on meeting the ACRs is minimal and as a result no specific opportunities have been identified to reduce the burden on business any further at this time. However, post EU withdrawal, consideration can be given to examining the ACRs going forward subject to resources and ministerial steer. This could include considering, if they still fulfil the objectives for which they were created for and if the provisions contained in the ACRs are still relevant or can be amended to take into account the specific nature of the UK airport market. It is possible that the commercial realities of airport-airline commercial engagement at many UK airports (which on the whole is positive) may not be completely aligned with some of the more prescriptive transparency requirements of the ACRs. As such, there may be a case to further consider whether the ACRs are best suited to respond to the UK's airport market needs, particularly if new information were to emerge as part of potential future CAA investigations. Some respondents suggested that the threshold above which the ACRs apply could be increased from 5mppa to 10mppa, which would focus the requirements on larger airports with more market power. However, such a change may not have a significant impact on the overall regulatory burden, and the interests of the users of smaller airports would also need to be considered in assessing any such change.

### **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?**

<sup>2</sup> [https://www.legislation.gov.uk/ukxi/2011/2491/pdfs/ukxiem\\_20112491\\_en.pdf](https://www.legislation.gov.uk/ukxi/2011/2491/pdfs/ukxiem_20112491_en.pdf)

The UK has traditionally been at the forefront by international standards, with a long-established system of economic regulation of airports. The requirements relating to consultation and transparency in the setting of airport charges are new to UK law, but are closely related to legislation for the economic regulation of airports. In an evaluation published by the European Commission in 2019, against criteria of relevance, effectiveness, efficiency, coherence and EU added value, it was concluded that “the Airport Charges Directive has led to improvements in airport charges setting [in the EU] compared to the hypothetical situation in which it had not entered into force, although it has not fully met its original objectives”.<sup>3</sup> Since the implementation of the ACRs, the UK system of regulation has been further updated by the Civil Aviation Act 2012, which includes additional regulatory obligations (such as price controls) for UK airports that meet the market power test in the Act – presently Heathrow and Gatwick. UK airport regulation is therefore considered to compare favourably with that in other jurisdictions.

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<sup>3</sup> *Evaluation of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges*, European Commission Staff Working Document, 9.7.2019, page 83.