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*Status: Point in time view as at 10/11/2011.*

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## STATUTORY INSTRUMENTS

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# 1994 No. 426 (N.I. 1)

## The Airports (Northern Ireland) Order 1994 <sup>F1</sup>

- - - - - 24th February 1994

**F1** functions transf. by SR 1999/481

### PART I INTRODUCTORY

#### **Title and commencement**

1.—(1) This Order may be cited as the Airports (Northern Ireland) Order 1994.

(2) Subject to paragraph (3) and to Article 56(3), this Order shall come into operation on the expiration of 2 months from the day on which it is made.

(3) The following provisions shall come into operation on such day or days as the Department may by order appoint<sup>F2</sup>, namely—

- (a) Part IV;
- (b) Schedule 6;
- (c) paragraphs 2, 4, 5, 7, 8, 10 to 12 and 14 of Schedule 9, and Article 71(2) so far as relating thereto.

**F2** fully exercised by SR 1995/294

#### **Interpretation**

2.—(1) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954<sup>F3</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the 1982 Act” means the Civil Aviation Act 1982<sup>F4</sup>;

“airport” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and services and facilities for use in connection with the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or

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set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically;

“airport operator” means the person for the time being having the management of an airport, or, in relation to a particular airport, the management of that airport;

“the CAA” means the Civil Aviation Authority;

F5 .....

“the Department” means the Department of the Environment;

“licensed airport” means an airport licensed under an Order in Council under section 60 of the 1982 Act (Air Navigation Orders);

“modifications” includes additions, omissions and amendments;

“operator”, in relation to an aircraft, means the person for the time being having the management of the aircraft;

“regulated airport” means an airport in respect of which—

- (a) a permission to levy airport charges is in force under Part IV; or
- (b) there subsists a pending application for such a permission made in accordance with Article 29;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954<sup>F6</sup>;

[<sup>F7</sup>“subsidiary” has the same meaning as in the Companies Acts (see section 1159 of the Companies Act 2006).]

(3) For the purposes of this Order, a hovercraft within the meaning of the Hovercraft Act 1968<sup>F8</sup> is not an aircraft.

(4) For the purposes of this Order, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

<b>F3</b>	1954 c.33 (NI)
<b>F4</b>	1982 c.16
<b>F5</b>	Art. 2(2): definition of "the Companies Order" omitted (1.10.2009) by virtue of <a href="#">Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)</a> , art. 2(1), <b>Sch. 1 para. 149(2)(a)</b> (with art. 10)
<b>F6</b>	1954 c.33 (NI)
<b>F7</b>	Art. 2(2): definition of "subsidiary" substituted (1.10.2009) by <a href="#">Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)</a> , art. 2(1), <b>Sch. 1 para. 149(2)(b)</b> (with art. 10)
<b>F8</b>	1968 c.59

## PART II

### POWERS IN RELATION TO LAND EXERCISABLE IN CONNECTION WITH AIRPORTS

#### *Compulsory acquisition*

#### **Power to acquire land compulsorily**

3.—(1) This Article applies to any regulated airport, other than a regulated airport managed by a district council under Article 17.

(2) The airport operator of an airport to which this Article applies may for any purpose connected with the safe and efficient performance of his functions as such acquire land compulsorily.

(3) The power of an airport operator to acquire land compulsorily under this Article may be exercised for the purpose of providing or improving any road which is to be provided or improved in pursuance of an order under Article 10 or for any other purpose for which land is required in connection with such an order.

(4) The power of an airport operator to acquire land compulsorily under this Article includes power to acquire, by the creation of a new right, an easement or other right over land.

(5) Where an airport operator proposes to acquire land compulsorily under this Article, the operator may apply to the Department for an order (“a vesting order”) vesting that land in the operator and the Department shall have power to make a vesting order.

(6) Schedule 6 to the Local Government Act (Northern Ireland) 1972<sup>F9</sup> shall apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act subject to the following modifications—

- (a) for any reference to the council there shall be substituted a reference to the airport operator;
  - (b) for any reference to the Department concerned there shall be substituted a reference to the Department;
  - (c) for any reference to that Act there shall be substituted a reference to this Order;
  - (d) in paragraph 6(2) for the words from “the fund” onwards there shall be substituted “funds of the airport operator (in this Schedule referred to as “the compensation fund”), and shall be discharged by payments made by the airport operator”; and
  - (e) in paragraph 12(2) for “the clerk of the council” there shall be substituted “such person as may be designated for the purposes of this Schedule by the airport operator”.
- (7) The power to make a vesting order under this Article in respect of land—
- (a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or
  - (b) which is declared by or under any statutory provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(8) In paragraph (7) “public body” means a body established by or under any statutory provision.

**F9** 1972 c.9 (NI)

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### **Power of entry in connection with compulsory acquisition of land**

4.—(1) Where an airport operator proposes to make an application to the Department for a vesting order under Article 3 in respect of any land, a person authorised in writing by the operator may, at any reasonable time, enter the land in order to make a survey for the purpose of determining whether the application should be made.

(2) A person authorised to enter any land under this Article shall not demand to do so as of right unless—

- (a) 14 days notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) Any person who intentionally obstructs a person acting in the exercise of a power conferred by this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Disposal of compulsorily acquired land**

5.—(1) This Article applies to the disposal of any land—

- (a) which was acquired compulsorily by the airport operator of any airport to which Article 3 applies or any predecessor in title of his under Article 3 or any other statutory provision; and
- (b) which, at the time of the disposal, forms part of an airport or is attached to an airport and administered with it as a single unit or has, at any time since the date of its acquisition, formed part of an airport or been so attached and administered.

(2) An airport operator shall not dispose of any land to which this Article applies, or any estate in such land, within the period of 25 years beginning with the date of its acquisition as mentioned in paragraph (1), unless—

- (a) the disposal is for the purposes of the provision of any of the services and facilities associated with the operation of an airport; or
- (b) the disposal is of a leasehold interest in the land for a term of less than 7 years; or
- (c) the Department consents to the disposal.

(3) Any consent of the Department under this Article may be given subject to such conditions as it thinks fit.

### **Protection of land from compulsory acquisition**

6. Where—

- (a) an application for a vesting order is made by a person with power to acquire land compulsorily (other than an airport operator) in respect of land which includes land belonging to the airport operator of an airport to which Article 3 applies and used for any purpose connected with the performance of his functions as such; and
- (b) that airport operator has made a representation to the Department concerned before the expiration of one month from the date of the last publication of the notice mentioned in paragraph 2(a) of Schedule 6 to the Local Government Act (Northern Ireland) 1972<sup>F10</sup>,

the Department concerned shall not make the vesting order unless the Department has certified—

- (i) that the land can be purchased and not replaced without serious detriment to the performance of those functions; or

- (ii) that, if purchased, the land can be replaced by other land belonging to, or available for acquisition by, the airport operator without serious detriment to the performance of those functions.

**F10** 1972 c.9 (NI)

*Other powers*

**Power to obtain rights over land**

7.—(1) This Article applies to—

- (a) any regulated airport;
- (b) any airport (other than a regulated airport) which is managed by a district council under Article 17; <sup>F11</sup> . . .
- (c) <sup>F11</sup> . . . . .

(2) The Department may make an order under this Article if, on representations made to it by the airport operator of an airport to which this Article applies, the Department is satisfied that it is reasonably necessary to do so in order to secure the safe and efficient operation of the airport or to secure the provision of any services required in relation to the airport.

(3) An order under this Article may provide for the creation in favour of the airport operator of easements over land or of other rights in or in relation to land, including rights to carry out and maintain works on any land and to install and maintain structures and apparatus on, under, over or across any land.

(4) Any such order may contain such provisions as appear to the Department to be necessary or expedient for the purposes of the order, including, in particular, provisions for authorising persons to enter any land for the purpose of carrying out, installing, maintaining or removing any works, structures or apparatus.

(5) Subject to paragraph (6), a person authorised to enter any land by an order under this Article shall not demand to do so as of right unless—

- (a) 14 days notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(6) Nothing in paragraph (5) shall restrict the right of an airport operator to enter any land in a case of an emergency or for the purpose of performing any functions which are required to be performed from time to time in connection with the maintenance or use of any works, structures or apparatus.

(7) The ownership of anything shall not be affected by reason only that it is placed on or under, or affixed to, any land in pursuance of an order under this Article.

(8) Schedule 1 shall have effect with respect to an order under this Article.

(9) An order under this Article shall be included among the matters which are required to be registered in the Statutory Charges Register.

(10) Any person who, at any time when an order under this Article is in force in respect of an airport, intentionally and without the consent of the airport operator interferes with—

- (a) any works carried out on any land in pursuance of the order; or
- (b) anything installed on, under, over or across any land in pursuance of the order,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 6 months, or to both.

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(11) Any person who intentionally obstructs a person in the exercise of any power of entry conferred by an order under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F11** Art. 7(1)(c) and preceding word omitted (10.11.2011) by virtue of [Airport Charges Regulations 2011](#) (S.I. 2011/2491), reg. 29(2), [Sch. 2 para. 5\(2\)](#)

### **Power to exercise control over land**

8.—(1) This Article applies to any licensed airport.

(2) Where, on representations made to it by the airport operator of an airport to which this Article applies, the Department is satisfied that it is reasonably necessary to do so in order to secure the safe and efficient operation of the airport, the Department may by order declare that any area of land specified in the order shall be subject to control by directions given in accordance with the provisions of this Article.

(3) Where an order under this Article is in force in relation to any area of land, the Department may, in pursuance of any general or special authority given by the order, give directions—

- (a) for prohibiting the erection within the area, except with the consent of the Department given either generally or subject to conditions, of any buildings or structures or of buildings or structures of such descriptions as may be specified in the directions;
- (b) for requiring the total or partial demolition of any building or structure within the area;
- (c) for restricting the height of trees on any land within the area, or for requiring any tree on any such land to be cut down or reduced in height;
- (d) for extinguishing any private right of way over land within the area;
- (e) for restricting the installation of cables, mains, sewers, pipes, wires or other apparatus on, under, over or across any land within the area;
- (f) for extinguishing, at the expiration of such period as may be determined by the directions, any subsisting right of installing or maintaining any such apparatus on, under, over or across any land within the area;
- (g) for requiring that, before the expiration of such period as may be determined by the directions, any such apparatus shall be removed from any land within the area.

(4) An order under this Article may contain such provisions as appear to the Department to be necessary or expedient for the purposes of the order, including, in particular—

- (a) provisions for appeal by any person aggrieved by a decision of the Department to refuse its consent under paragraph (3)(a) or to grant its consent subject to conditions;
- (b) provisions for empowering any person authorised in that behalf by the Department to remove, pull down, cut down, or alter so as to bring into conformity with the requirements of any directions given under the order, any building, structure, tree or apparatus which contravenes those requirements.

(5) Schedule 1 shall have effect with respect to an order under this Article.

(6) Schedule 2 shall have effect with respect to any direction given under an order made under this Article.

(7) An order under this Article shall be included among the matters which are required to be registered in the Statutory Charges Register.

**Power to indicate presence of obstructions near airports**

9.—(1) This Article applies to any licensed airport.

(2) Where, on representations made to it by the airport operator of an airport to which this Article applies, the Department is satisfied, with respect to any building, structure or erection in the vicinity of the airport, that, in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building, structure or erection, the Department may by order authorise the airport operator—

- (a) to execute, install, maintain, operate, and, as occasion requires, to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified in the order; and
- (b) so far as may be necessary for exercising any of the powers conferred by the order to enter and pass over (with or without vehicles) any such land as may be specified in the order.

(3) Subject to paragraph (4), a person authorised to enter any land by an order under this Article shall not demand to do so as of right unless—

- (a) 14 days notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(4) Nothing in paragraph (3) shall restrict the right of an airport operator to enter any land in a case of an emergency or for the purpose of performing any functions which are required to be performed from time to time in connection with the maintenance or use of any works or apparatus.

(5) The ownership of anything shall not be affected by reason only that it is placed on or under, or affixed to, any land in pursuance of an order under this Article.

(6) Schedule 1 shall have effect with respect to an order under this Article.

(7) Subject to paragraph (8), any person who, at any time when an order under this Article is in force in respect of an airport, intentionally and without the consent of the airport operator, interferes with any works or things executed, placed on or affixed on, under or over any land in pursuance of the order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 6 months, or to both.

(8) Nothing in paragraph (7) applies to the doing of any work for the purpose of repairing, altering, demolishing or removing a building, structure or erection where—

- (a) notice of the doing of that work is given as soon as may be to the airport operator; and
- (b) the giving of warning of the presence of the building, structure or erection in the manner provided by any order under this Article in force in relation thereto is not interrupted.

(9) Any person who intentionally obstructs a person in the exercise of any of the powers conferred by an order under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Power to stop up and divert roads**

10.—(1) This Article applies to—

- (a) any regulated airport;
- (b) any airport (other than a regulated airport) which is managed by a district council under Article 17; <sup>F12</sup> . . . .
- (c) <sup>F12</sup> . . . . .

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(2) Where, on representations made to it by the airport operator of an airport to which this Article applies, the Department is satisfied that it is reasonably necessary to do so in order to secure the safe and efficient operation of the airport, the Department may by order stop up or divert any road.

(3) An order under this Article may provide for all or any of the following matters, that is to say—

- (a) the provision or improvement of any road so far as the Department thinks such provision or improvement necessary or desirable in consequence of the stopping up or diversion of a road under the order;
- (b) for directing that any road to be provided or improved in consequence of the stopping up or diversion of a trunk road under the order shall itself be a trunk road for all or any of the purposes of the statutory provisions relating to trunk roads;
- (c) for the retention or removal of any cables, mains, sewers, pipes, wires or other apparatus placed under, in, on, over, along or across any road stopped up or diverted under the order, and for the extinguishment, modification or preservation of any rights as to the use or maintenance of that apparatus;
- (d) if any road is to be provided or improved under the order, for authorising or requiring the provision of any such apparatus as is mentioned in sub-paragraph (c) under, in, on, over, along or across that road, in lieu of any apparatus removed from a road in pursuance of the order, and for conferring rights as to the use or maintenance of apparatus so provided;
- (e) for requiring the Department, the airport operator or any other specified authority or person—
  - (i) to carry out any work provided for by the order; or
  - (ii) to pay, or to make contributions in respect of, the cost of doing any such work or any increased expenditure to be incurred which is attributable to the doing of any such work.

(4) Schedule 1 shall have effect with respect to an order under this Article.

(5) The powers of the Department under this Article shall include power to make an order to stop up or divert any road which is temporarily stopped up or diverted under any other statutory provision, and the provisions of this Article shall not prejudice any power conferred on the Department by any other statutory provision to stop up or divert a road.

(6) In this Article “road” has the meaning assigned to it by Article 2(2) of the Roads (Northern Ireland) Order 1993<sup>F13</sup>.

**F12** Art. 10(1)(c) and preceding word omitted (10.11.2011) by virtue of [Airport Charges Regulations 2011](#) (S.I. 2011/2491), reg. 29(2), [Sch. 2 para. 5\(3\)](#)

**F13** 1993 NI 15

### **Power to control traffic in interests of safety of aircraft**

**11.—**(1) This Article applies to any licensed airport.

(2) Where, on representations made to it by the airport operator of an airport to which this Article applies, the Department is satisfied that in the interests of the safety of aircraft using the airport the traffic on a road should be regulated or restricted, the Department may by order—

- (a) provide for the regulation, whether by means of signals, barriers or otherwise, of traffic on that road; or
- (b) restrict the use of that road by vehicles of such classes or descriptions as may be specified in the order.



(3) An order under this Article may provide that a constable appointed under Article 19 shall have the like powers, privileges and duties in relation to the road specified in the order as he has in relation to the airport for which he was appointed.

(4) Schedule 1 shall have effect with respect to an order under this Article.

(5) Any person who contravenes, or uses a vehicle or causes or permits a vehicle to be used in contravention of, an order made under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In this Article “road” has the meaning assigned to it by Article 2(2) of the Road Traffic (Northern Ireland) Order 1981<sup>F14</sup>.

F14 1981 NI 1

### Supplementary

#### Provisions as to<sup>F15</sup> electronic communications apparatus]

12.—(1) Paragraph 23 of<sup>F15</sup> the electronic communications code] (undertaker's works) shall apply for the purposes—

- (a) of any work in pursuance of an order or direction under Article 7 or 8;
- (b) of anything done with respect to a road in pursuance of an order under Article 10 to which paragraph (2) applies,

to the person doing that work or, as the case may be, the Department; and, in the case of any such order as is mentioned in sub-paragraph (b), any person having an estate in land over which the road passes shall be entitled to require the alteration of the<sup>F15</sup> electronic communications apparatus] in question.

(2) This paragraph applies to an order under Article 10 where the order provides—

- (a) for the stopping up or diversion of the road; or
- (b) unless the road is a trunk road<sup>F16</sup> or special road], for the improvement of the road,

and immediately before the order comes into operation any<sup>F15</sup> electronic communications apparatus] is kept installed for the purposes of<sup>F15</sup> an electronic communications code network] under, in, on, over, along or across the road.

(3) Subject to the preceding provisions of this Article, the operator of<sup>F15</sup> an electronic communications code network] shall, in a case falling within paragraph (2)(a), have the same rights in respect of any apparatus kept installed for the purposes of<sup>F15</sup> that network] as if the order had not come into operation.

<sup>F16</sup>(3A) Paragraph 23 of<sup>F15</sup> the electronic communications code] shall not apply by virtue of paragraph (2)(b) in relation to the alteration of any<sup>F15</sup> electronic communications apparatus] where the alteration is for the purpose of major work works, major bridge works or major transport works within the meaning of the Street Works (Northern Ireland) Order 1995.]

(4) Sub-paragraph (8) of paragraph 23 of<sup>F15</sup> the electronic communications code] (offence) shall be deemed to be omitted for the purposes of the application by this Article of that paragraph to the Department.

(5) Paragraph 1(2) of<sup>F15</sup> the electronic communications code] (alteration of apparatus to include moving, removal or replacement or apparatus) shall apply for the purposes of the preceding provisions of this Article as it applies for the purposes of the code.

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(6) Paragraph 21 of<sup>F15</sup> the electronic communications code] (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this Article to require the alteration, moving or replacement of any<sup>F15</sup> electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.

*Para. (7) rep. by 2003 c. 21*

**F15** 2003 c. 21

**F16** 1995 NI 19

### Compensation payable by airport operators

13. Schedule 3 shall have effect in relation to the payment by airport operators of compensation to persons affected by the operation of certain provisions of this Part.

### Compensation in respect of planning decisions relating to safety of airports

14.—(1) This Article applies to any licensed airport.

(2) The Department shall be entitled to recover from the airport operator of an airport to which this Article applies a sum equal to any compensation which the Department has become liable to pay, if—

- (a) it has become so liable under Part II or III of the Land Development Values (Compensation) Act (Northern Ireland) 1965<sup>F17</sup> or under Part VIII of the Planning (Northern Ireland) Order 1972<sup>F18</sup>; and
- (b) the liability is attributable to a planning decision which would not have been taken, or to an order which would not have been made, but for the need—
  - (i) to secure the safe and efficient operation of the airport; or
  - (ii) to prevent persons, buildings, structures or erections from being struck by aircraft using the airport; or
  - (iii) to secure the safe and efficient operation of apparatus owned by the airport operator and provided for the purpose of assisting air traffic control or as an aid to air navigation.

(3) Where a sum equal to any compensation is paid to the Department by an airport operator under paragraph (2), the Department shall pay to that operator any amount received by the Department in respect of the compensation under section 24 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (which relates to the recovery of compensation on subsequent development).

(4) In paragraph (2) “planning decision” means a decision made on an application under Part IV of the Planning (Northern Ireland) Order 1991<sup>F19</sup>.

**F17** 1965 c.23 (NI)

**F18** 1972 NI 17

**F19** 1991 NI 11

### Concurrent proceedings

15.—(1) Where an airport operator—

- (a) applies to the Department for a vesting order under Article 3; or
- (b) makes representations to the Department under Article 7(2),

the proceedings which—

- (i) are required under this Part to be taken in connection with the making of a vesting order or (as the case may be) an order under Article 7; and
- (ii) if applicable, are required by Articles 20 to 22 of the Planning (Northern Ireland) Order 1991 to be taken for the purpose of planning permission,

may, where the Department so directs, be taken concurrently, so far as is practicable.

(2) Where—

- (a) a public local inquiry is to be held under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of a public local inquiry, it appears to the Department that the matters are so far cognate that they should be considered together,

the Department may direct that the two inquiries be held concurrently or combined as one inquiry.

### **Application to Crown land**

**16.**—(1) Subject to paragraphs (2) and (3), the provisions of this Part shall have effect in relation to Crown land as they have effect in relation to land which is not Crown land.

(2) The powers conferred by Article 3(2) shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown.

(3) The powers conferred by or under Article 3(2), 7, 8 or 9 shall not, except with the consent of the appropriate authority, be exercisable in relation to Crown land.

(4) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(5) In this Article—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate;

“government department” means a department of the Government of the United Kingdom or a Northern Ireland department.

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## PART III

### MANAGEMENT OF AIRPORTS

#### Power of district councils to provide and maintain airports

17.—(1) A district council may, with the consent of the Department and subject to such conditions as the Department may impose, establish and maintain airports, and provide and maintain in connection therewith roads, approaches, apparatus, equipment and buildings and other accommodation.

(2) A district council may, for the purpose of exercising any of the powers conferred on the council by paragraph (1), acquire land by agreement or compulsorily.

(3) The power of a district council to acquire land under paragraph (2) may be exercised—

- (a) for the purpose of securing that land adjacent to the site of an airport which the council has established, or is about to establish, is not used in such manner as to cause interference with, or danger or damage to, aircraft using the airport;
- (b) for the purpose of providing or improving any road which is to be provided or improved in pursuance of an order under Article 10 or for any other purpose for which land is required in connection with such an order.

(4) The power of a district council to acquire land compulsorily under paragraph (2) includes power to acquire, by the creation of a new right, an easement or other right over land.

(5) The powers conferred by paragraph (2) shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown; and paragraphs (4) and (5) of Article 16 apply for the purposes of this paragraph as they apply for the purposes of that Article.

(6) If the Department is satisfied, with respect to any airport provided by a district council under this Article, that it is necessary or expedient that the council should be empowered to carry on in connection with the airport any particular business, being a business which appears to the Department to be ancillary to the carrying on of an airport but which the council would not otherwise have power to carry on, the Department may authorise that council, subject to such conditions, if any, as the Department may think fit, to carry on that business in connection with the airport.

(7) In this Article “provide” and “maintain” have the meanings assigned to them by section 147 of the Local Government Act (Northern Ireland) 1972<sup>F20</sup>.

**F20** 1972 c.9 (NI)

#### Airport byelaws

18.—(1) This Article applies to—

- (a) any airport managed by a district council under Article 17; and
- (b) any other airport designated for the purposes of this Article by an order made by the Department.

(2) The airport operator of an airport to which this Article applies may make byelaws for regulating the use and operation of the airport and the conduct of persons while within the airport.

(3) Any such byelaws may, in particular, include byelaws—

- (a) for securing the safety of aircraft, vehicles and persons using the airport and preventing danger to the public arising from the use and operation of the airport;

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- (b) for controlling the operation of aircraft within, or directly above, the airport for the purpose of limiting or mitigating the effect of noise, vibration and atmospheric pollution caused by aircraft using the airport;
  - (c) for preventing obstruction within the airport;
  - (d) for regulating vehicular traffic anywhere within the airport, except on roads within the airport to which the Road Traffic (Northern Ireland) Order 1981<sup>F21</sup> applies, and in particular (with that exception) for imposing speed limits on vehicles within the airport and for restricting or regulating the parking of vehicles or their use for any purpose or in any manner specified in the byelaws;
  - (e) for prohibiting waiting by vehicles plying for hire except at standings appointed by such person as may be specified in the byelaws;
  - (f) for prohibiting or restricting access to any part of the airport;
  - (g) for preserving order within the airport and preventing damage to property within it;
  - (h) for regulating or restricting advertising within the airport;
  - (i) for requiring any person, if so requested by a constable or airport official, to leave the airport or any particular part of it, or to state his name and address and the purpose of his being within the airport;
  - (j) for securing the safe custody and redelivery of any property which, while not in proper custody, is found within the airport or in an aircraft within the airport, and in particular—
    - (i) for requiring charges to be paid in respect of any such property before it is redelivered; and
    - (ii) for authorising the disposal of any such property if it is not redelivered before the end of such period as may be specified in the byelaws;
  - (k) for defining the area which is to be taken as constituting the airport for the purposes of the byelaws.
- (4) In sub-paragraph (i) of paragraph (3) “airport official” means a person authorised by the airport operator; and any such official shall not exercise any power under a byelaw made by virtue of that sub-paragraph without producing written evidence of his authority if required to do so.
- (5) Part VI of the Local Government Act (Northern Ireland) 1972<sup>F22</sup> shall have effect in relation to byelaws made by a district council under this Article.
- (6) Schedule 4 shall have effect in relation to byelaws made by any other airport operator under this Article.

**F21** 1981 NI 1

**F22** 1972 c.9 (NI)

### **Appointment of constables for an airport**

**19.**—(1) An airport operator authorised in that behalf by the Secretary of State may appoint any person employed by the operator to be a constable on the airport managed by that operator.

(2) An authorisation under this Article may be granted subject to such conditions as the Secretary of State thinks fit.

(3) Every person appointed under paragraph (1) shall on his appointment make a declaration before a justice of the peace to execute the office of a constable on the airport for which he was appointed, and, when he has made the declaration, he shall on that airport have the powers and privileges and be liable to the duties and responsibilities of a constable.

*Status: Point in time view as at 10/11/2011.*

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(4) Constables appointed under this Article shall be under the exclusive control of the airport operator by whom they are appointed and that operator may suspend or terminate the appointment of any such constable.

(5) For the purposes of—

<sup>F23</sup>(a) the Employment Rights (Northern Ireland) Order 1996; and]

(b) the Industrial Relations (Northern Ireland) Order 1992<sup>F24</sup>,

the holding of the office of constable under this Article on any airport shall be treated as work under a contract of employment with the airport operator; and, accordingly, for those purposes, service in such office shall not be treated as police service within the meaning of those Orders.

**F23** 1996 NI 16

**F24** 1992 NI 5

### Facilities for consultation at airports

**20.**—(1) This Article applies to any airport which is designated for the purposes of this Article by an order made by the Department.

(2) The operator of an airport to which this Article applies shall provide for—

- (a) users of the airport;
- (b) the General Consumer Council for Northern Ireland;
- (c) the district council in whose district the airport or any part thereof is situated or whose district is in the locality of the airport; and
- (d) any other organisation representing the interests of persons concerned with the locality in which the airport is situated,

adequate facilities for consultation with respect to any matter concerning the management or administration of the airport which affects their interests.

### Control of noise at airports

**21.** An airport operator shall take such measures as the Department may direct for limiting noise and vibration or mitigating their effect and, in particular, for restricting the use of the airport to aircraft and persons complying with such requirements as may be specified in the directions.

### Grants towards cost of soundproofing buildings

**22.**—(1) If it appears to the Department that buildings near an airport require further protection from noise and vibration attributable to use of the airport than can be given by measures taken or to be taken in pursuance of Article 21, the Department may by order make a scheme requiring the airport operator to make grants towards the cost of insulating those buildings or parts of those buildings against noise.

(2) A scheme under this Article may apply only to buildings of such a class or classes as may be specified in the scheme.

(3) A scheme under this Article shall specify the area or areas in which buildings must be situated for the grants to be payable, and the persons to whom, the expenditure in respect of which and the rate at which the grants are to be paid, and may make the payment of any grant dependent upon compliance with such conditions as may be specified in the scheme.

(4) A scheme under this Article may require the airport operator, in any case where an application for a grant is refused, to give the applicant at his request a written statement of the reasons for the refusal.

(5) Before making a scheme under this Article in relation to an airport, the Department shall consult the airport operator.

### **Power of airport operators to detain and sell aircraft for unpaid airport charges**

**23.**—(1) This Article applies to any airport designated for the purposes of this Article by an order made by the Department.

(2) Where default is made in the payment of airport charges incurred in respect of any aircraft at an airport to which this Article applies, the airport operator may, subject to the provisions of this Article—

(a) detain, pending payment, either—

(i) the aircraft in respect of which the charges were incurred (whether or not they were incurred by the person who is the operator of the aircraft at the time when the detention begins); or

(ii) any other aircraft of which the person in default is the operator at the time when the detention begins; and

(b) if the charges are not paid within 56 days of the date when the detention begins, sell the aircraft in order to satisfy the charges.

(3) An airport operator shall not detain, or continue to detain, an aircraft under this Article by reason of any alleged default in the payment of airport charges if the operator of the aircraft or any other person claiming an interest therein—

(a) disputes that the charges, or any of them, are due or, if the aircraft is detained under paragraph (2)(a)(i), that the charges in question were incurred in respect of that aircraft; and

(b) gives to the airport operator, pending the determination of the dispute, sufficient security for the payment of the charges which are alleged to be due.

(4) An airport operator shall not sell an aircraft under this Article without the leave of the High Court; and the High Court shall not give leave except on proof that a sum is due to the airport operator for airport charges, that default has been made in the payment thereof and that the aircraft which the airport operator seeks leave to sell is liable to sale under this Article by reason of the default.

(5) An airport operator proposing to apply for leave to sell an aircraft under this Article shall take such steps as the Department may by regulations prescribe—

(a) for bringing the proposed application to the notice of persons whose interests may be affected by the determination of the High Court thereon; and

(b) for affording to any such person an opportunity of becoming a party to the proceedings on the application;

and, if leave is given, the airport operator shall secure that the aircraft is sold for the best price that can reasonably be obtained.

(6) Failure to comply with any requirement of paragraph (5) in respect of any sale, while actionable as against the airport operator concerned at the suit of any person suffering loss in consequence thereof, shall not, after the sale has taken place, be a ground for impugning its validity.

(7) The proceeds of any sale under this Article shall be applied as follows, and in the following order, that is to say—

(a) in payment of any sum payable in respect of the aircraft under any statutory provision;

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(b) in payment of the expenses incurred by the airport operator in detaining, keeping and selling the aircraft, including his expenses in connection with the application to the High Court;

(c) in payment of the airport charges which the High Court has found to be due;

and the surplus, if any, shall be paid to or among the person or persons whose interests in the aircraft have been divested by reason of the sale.

(8) The power of detention and sale conferred by this Article in respect of an aircraft extends to the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator, and references to the aircraft in paragraphs (3) to (7) include, except where the context otherwise requires, references to any such equipment and stores.

(9) The power of detention conferred by this Article in respect of an aircraft extends to any aircraft documents carried in it, and any such documents may, if the aircraft is sold under this Article, be transferred by the airport operator to the purchaser.

(10) The power conferred by this Article to detain an aircraft in respect of which charges have been incurred may be exercised on the occasion on which the charges have been incurred or on any subsequent occasion when the aircraft is on the airport on which those charges were incurred or on any other airport owned or managed by the airport operator concerned.

(11) In this Article—

“airport charges” means charges payable to an airport operator for the use of, or for services provided at, an airport, but does not include charges payable by virtue of regulations under section 73 of the 1982 Act;

“aircraft documents”, in relation to any aircraft, means any certificate of registration, maintenance or air-worthiness of that aircraft, any log book relating to the use of that aircraft or its equipment and any similar document.

(12) Nothing in this Article shall prejudice any right of an airport operator to recover any charges, or any part thereof, by action.

**Financial assistance for airport operators**

24.—(1) The Department with the approval of the Department of Finance and Personnel may make grants or loans to any airport operator to enable that operator to defray capital expenditure which has been or may be incurred by the operator with the approval of the Department.

(2) Any loan made by the Department under paragraph (1) shall be repaid to it at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department with the approval of the Department of Finance and Personnel may from time to time determine.

**Status of certain airport operators as statutory undertakers**

25.—(1) This Article applies to—

- (a) any regulated airport;
- (b) any airport (other than a regulated airport) which is managed by a district council under Article 17; <sup>F25</sup> . . . .
- (c) <sup>F25</sup> . . . . .

(2) Schedule 5 shall have effect with respect to the application of the statutory provisions mentioned in that Schedule (which relate to statutory undertakers) to the airport operators of airports to which this Article applies.



**F25** Art. 25(1)(c) and preceding word omitted (10.11.2011) by virtue of [Airport Charges Regulations 2011](#) (S.I. 2011/2491), reg. 29(2), **Sch. 2 para. 5(4)**

### Power to dispose of land to airport operators

26. Notwithstanding anything in any other statutory provision, a Northern Ireland department may, on such financial and other conditions as that department considers appropriate, dispose of land vested in that department to the operator of a regulated airport for any purpose connected with the performance of his functions as such.

## PART IV

### ECONOMIC REGULATION OF AIRPORTS

#### *Preliminary*

#### Interpretation of this Part

27.—(1) In this Part—

“the 1973 Act” means the Fair Trading Act 1973<sup>F26</sup>;

“the 1980 Act” means the Competition Act 1980<sup>F27</sup>;

“airport charges”, in relation to an airport, means—

- (a) charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at the airport (including charges that are to any extent determined by reference to the number of passengers on board the aircraft, [<sup>F28</sup>but excluding excepted charges]); and
- (b) charges levied on aircraft passengers in connection with their arrival at, or departure from, the airport by air;

“air transport services” means services for the carriage by air of passengers or cargo;

“cargo” includes mail;

“the Commission” means the [<sup>F29</sup>Competition Commission];

[<sup>F30</sup>“excepted charges” means—

- (a) penalties payable by virtue of section 78A of the 1982 Act (penalty schemes established by managers of aerodromes);
- (b) charges payable for services provided for airport users as described in the Annex to the Council Directive [96/67/EC](#) of 15th October 1996 on access to the groundhandling market at Community airports;
- (c) charges payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services);
- (d) 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
- (e) 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

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laying down a common charging scheme for air navigation services, as amended by Commission Regulation (EU) No. 1191/2010 of 16th December 2010;]

“operational activities”, in relation to an airport, means, subject to paragraph (2), any activities—

- (a) which are carried on wholly or mainly for the benefit of users of the airport; or
  - (b) the revenues from which are wholly or mainly attributable to payments by such users;
- “prescribed” has the meaning given by paragraph (3);

“relevant activities”, in relation to an airport, means, subject to paragraph (4), the provision at the airport of any services or facilities for the purposes of—

- (a) the landing, parking or taking off of aircraft;
- (b) the servicing of aircraft (including the supply of fuel); or
- (c) the handling of passengers or their baggage or of cargo at all stages while on airport premises (including the transfer of passengers, their baggage or cargo to and from aircraft);

“user”, in relation to an airport, means—

- (a) a person for whom any services or facilities falling within the definition of “relevant activities” are provided at the airport; or
- (b) a person using any of the air transport services operating from the airport.

(2) If the Secretary of State makes an order under section 30(4) of the Airports Act 1986<sup>F31</sup> modifying the definition of “operational activities” in that provision, the Department may by order make corresponding modifications of the definition of “operational activities” in paragraph (1).

(3) Without prejudice to the generality of section 7(2) of the 1982 Act (special provisions as respects certain functions of the CAA), regulations made by the Secretary of State in pursuance of that provision may prescribe for the purposes of that provision any functions conferred on the CAA by this Part; and in this Part “prescribed” means prescribed by regulations so made.

(4) The reference in the definition of “relevant activities” in paragraph (1) to the provision of facilities for the purposes of the handling of passengers does not include the provision of facilities for car parking, for the refreshment of passengers at the airport or for the supply of consumer goods or services there.

(5) For the purposes of this Part a body corporate shall be treated as an associated company of an airport operator if either that body or the airport operator is a body corporate of which the other is a subsidiary or if both of them are subsidiaries of one and the same body corporate.

**F26** 1973 c.41

**F27** 1980 c.21

**F28** Art. 27(1): words in definition of "airport charges" substituted (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 25(2)(a)** (with [reg. 26](#))

**F29** SI 1999/506

**F30** Art. 27(1): definition of "excepted charges" inserted (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 25(2)(b)** (with [reg. 26](#))

**F31** 1986 c.31

*Permissions*

**Airports subject to economic regulation: requirement for permission to levy airport charges**

**28.**—(1) Where an airport is subject to economic regulation under this Part no airport charges shall be levied at the airport unless—

- (a) they are levied by the airport operator; and
- (b) a permission to levy airport charges is for the time being in force in respect of the airport.

(2) Where the annual turnover of the business carried on at an airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before the date when this Article comes into operation, then (subject to Article 44(3)) the airport shall be subject to economic regulation under this Part as from the end of the period of six months beginning with that date.

(3) Where—

- (a) an airport is not one to which paragraph (2) applies; but
- (b) the annual turnover of the business carried on at the airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before a date later than the date when this Article comes into operation,

the airport shall be subject to economic regulation under this Part as from the end of the period of nine months beginning with that later date.

(4) The following shall not be subject to economic regulation under this Part, namely—

- (a) any airport managed by a subsidiary of the Holding Company (within the meaning of Part V);
- (b) <sup>F32</sup> .....

or

- (c) any airport for the time being exempted from economic regulation under this Part by virtue of paragraph (5).

(5) Where at any time the Department is satisfied as respects any airport which is subject to economic regulation under this Part that the annual turnover of the business carried on at the airport by the airport operator did not exceed £1 million in the case of each of the two last financial years ending before that time, it may, after consulting the CAA, determine that the airport shall cease to be subject to economic regulation under this Part as from the date of its determination.

(6) Any such determination may be made by the Department either of its own motion or on the application of the airport operator.

(7) A determination under paragraph (5) shall not—

- (a) preclude paragraph (3) from applying to the airport in question on a subsequent occasion; or
- (b) affect any rights or liabilities accruing by virtue of this Part before the determination is made.

(8) Where any person levies any airport charges in contravention of paragraph (1)—

- (a) he shall not be guilty of an offence by reason only of his contravening that paragraph; but
- (b) any airport charges so levied shall not be recoverable by him, and, in so far as they have been paid to him, shall be recoverable from him.

(9) The Department may, by order made with the consent of the Department of Finance and Personnel, substitute for the sum for the time being specified in paragraphs (2), (3) and (5) such greater sum as may be specified in the order.

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(10) Where at the coming into operation of an order under paragraph (9) any airport is, or is due to become, subject to economic regulation under this Part in accordance with paragraph (2) or (3), that paragraph shall continue to apply to the airport notwithstanding any increase in the sum specified in that paragraph effected by the order.

(11) Any reference in this Article to the business carried on at any airport by the airport operator shall, in a case where the person for the time being having the management of the airport has not had its management for the whole or any part of any period relevant for the purposes of this Article, be construed as including a reference to the business carried on there by any other person who had the management of the airport for the whole or any part of that period.

(12) In this Article “annual turnover”, in relation to the business carried on at an airport by the airport operator, means the aggregate, as stated or otherwise shown in the accounts of the business, of all sums received in the course of the business during a financial year, including grants from any public body but excluding—

- (a) capital receipts; and
- (b) loans made by any person.

(13) In paragraph (12) “public body” means a body established by or under a statutory provision.

**F32** Art. 28(4)(b) omitted (10.11.2011) by virtue of [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), reg. 29(2), [Sch. 2 para. 5\(5\)](#)

### Grant or refusal of permissions

**29.**—(1) Where an airport is by virtue of Article 28(2) or (3) due to become subject to economic regulation under this Part at the end of the period of either six or nine months referred to in that provision, the airport operator may, at any time after the beginning of that period, make an application to the CAA for the grant in respect of the airport of a permission to levy airport charges.

(2) Any such application—

- (a) must be in writing and contain such particulars with respect to such matters as the CAA may specify in a notice published in the prescribed manner; and
- (b) must be accompanied by such fee as may be specified in a scheme or regulations made under section 11 of the 1982 Act.

(3) Where an application is made in relation to an airport by the airport operator in accordance with this Article, then, as from the date of the application or the date when the airport becomes subject to economic regulation under this Part (whichever is the later) there shall, by virtue of this paragraph, be deemed for all purposes to be a permission in force under this Part in respect of the airport until such time as—

- (a) the CAA grants a permission in pursuance of the application; or
- (b) the airport operator is notified by the CAA that it has refused the application.

(4) Where—

- (a) any such application has been so made by an airport operator; and
- (b) he has complied with any requirement to produce any documents, or to furnish any accounts, estimates, returns or other information, to the CAA which the CAA may have imposed on him under this Part for the purpose of enabling it to determine whether, and (if so) what, conditions should be imposed under this Part in relation to the airport in question,

the CAA shall grant the application within such period as may be prescribed.

(5) Where—

- (a) any such application has been so made by an airport operator; but

(b) he has failed to comply with any such requirement as is mentioned in paragraph (4)(b) within such time as may have been allowed for the purpose, the CAA may, if it thinks fit, allow him further time (not exceeding such period as may be prescribed) to comply with the requirement; and if he has still not complied with it when that further time expires the CAA shall refuse the application.

(6) The grant or refusal of an application made by an airport operator under this Article shall be notified to him in such manner as may be prescribed.

(7) Any permission granted under this Article in respect of an airport shall come into force on whichever is the later of the following dates, namely—

(a) the date when it is granted; and

(b) the date when the airport becomes subject to economic regulation under this Part,

and shall remain in force unless and until it is revoked in pursuance of Article 40(9) or the airport ceases to be subject to economic regulation under this Part by virtue of a determination of the Department under Article 28(5) (and shall so remain in force notwithstanding any change of airport operator).

### *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<sup>F33</sup>.

(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.

**F33** 1986 c.31

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#### **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)**

#### **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 [<sup>F34</sup>(either in accordance with Article 31A or otherwise)], 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 [<sup>F35</sup>the 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 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.

**F34** Words in art. 31(1) inserted (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 25(3)**

**F35** 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)

### [<sup>F36</sup>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

*Status: Point in time view as at 10/11/2011.*

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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.

**F36** Arts. 31A, 31B inserted (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 25(4)**

### 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.]

**F36** 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

(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

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- (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 [<sup>F37</sup>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.

**F37** 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,

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).

### *References to Commission*

#### **References to Commission in relation to imposition or modification of conditions**

**34.**—(1) Where the CAA is, by virtue of Article 31(9) required to make a reference to the Commission under this paragraph in respect of any airport, that reference shall be so framed as to require the Commission to investigate and report on—

- (a) the question as to what are the maximum amounts that should be capable of being levied by the airport operator by way of airport charges at the airport during such period of five years as the CAA may specify in the reference; and
- (b) the questions specified in paragraph (2).

(2) Those questions are—

- (a) whether the airport operator has, at any time during the relevant period, pursued—
  - (i) in relation to any airport charges levied by him at the airport; or
  - (ii) in relation to any operational activities carried on by him and relating to the airport; or
  - (iii) in relation to the granting of a right by virtue of which any operational activities relating to the airport may be carried on by any other person or persons,a course of conduct which has operated or might be expected to operate against the public interest; and
- (b) if so, whether the effects adverse to the public interest which that course of conduct has had, or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.

(3) Where the CAA is, by virtue of Article 32(6), authorised to make a reference to the Commission under this paragraph in respect of any airport, that reference shall be so framed as to require the Commission to investigate and report on the questions—

- (a) whether the airport operator has, at any time during the relevant period, pursued the course of conduct referred to in the CAA's notification under Article 32(6); and
- (b) if so, whether any such course of conduct has operated or might be expected to operate against the public interest; and
- (c) if so, whether the effects adverse to the public interest which that course of conduct has had, or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.

(4) The CAA may, at any time, by notice given to the Commission vary any reference under paragraph (3) by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receiving such a notice the Commission shall give effect to the variation.

(5) In determining for the purposes of this Article whether any particular matter has operated, or might be expected to operate, against the public interest, the Commission—

- (a) shall have regard to the objectives specified in sub-paragraphs (a) to (d) of Article 30(2); and

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- (b) in the case of a matter relating to the granting of a right by virtue of which any operational activities relating to an airport may be carried on by any person or persons, shall in addition have regard to the following objective, namely the furtherance of the reasonable interests of persons granted such rights.
- (6) In this Article “the relevant period”
  - (a) in relation to any reference in respect of an airport under paragraph (1), means—
    - (i) in the case of the first reference in respect of that airport under that paragraph, the period of twelve months ending with the date of the reference; and
    - (ii) in the case of any subsequent such reference, the period ending with the date of that reference and beginning with the date of the reference immediately preceding it; and
  - (b) in relation to any reference in respect of an airport under paragraph (3), means the period of twelve months ending with the date of the reference.

### **Supplementary provisions relating to references**

**35.—(1)** For the purpose of assisting the Commission in carrying out an investigation on a reference under Article 34, the CAA may—

- (a) in the case of a reference under paragraph (1) of that Article, specify in the reference—
    - (i) any view that the CAA has formed as to what the maximum amounts referred to in sub-paragraph (a) of that paragraph should be;
    - (ii) any course of conduct which, in its opinion, has been pursued by the airport operator in relation to any of the matters specified in paragraph (2)(a) of that Article and has operated, or might be expected to operate, against the public interest;
    - (iii) any effects adverse to the public interest which, in its opinion, any such course of conduct has had or might be expected to have; and
    - (iv) any conditions or modifications of conditions by which, in its opinion, its view as to those maximum amounts could be implemented or (as the case may be) those adverse effects could be remedied or prevented;
  - (b) in the case of a reference under paragraph (3) of that Article, or a variation of such a reference, specify in the reference or variation—
    - (i) any effects adverse to the public interest which, in the opinion of the CAA, any course of conduct specified in the reference or variation has had or might be expected to have; and
    - (ii) any conditions or modifications of conditions by which, in its opinion, those adverse effects could be remedied or prevented.
- (2) It shall be the duty of the CAA, for the purpose of assisting the Commission in carrying out an investigation on any reference under Article 34, to give to the Commission—
- (a) any information in the possession of the CAA which—
    - (i) it is within the power of the CAA to give; and
    - (ii) relates to matters falling within the scope of the investigation; and
    - (iii) either is requested by the Commission for that purpose or is information that it would in the CAA's opinion be appropriate to give to the Commission for that purpose without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within the power of the CAA to give, in relation to any such matters;

and the Commission shall, for the purpose of carrying out the investigation, take account of any information given to them in pursuance of sub-paragraph (a).

*Paras. (3) and (3A) rep. by 2002 c. 40*

(4) The CAA shall—

- (a) publish particulars of any reference under Article 34, and of any variation of such a reference, in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
- (b) send a copy of the reference or variation to the Department and to the airport operator concerned.

#### [<sup>F38</sup>References under Article 34: time limits

**35A.**—(1) Every reference under Article 34 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Commission on a reference under Article 34 shall not have effect (and no action shall be taken in relation to it under Article 37) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the CAA under paragraph (3).

(3) The CAA may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under paragraph (3) in relation to the same reference.

(5) The CAA shall, in the case of an extension made by it under paragraph (3)—

- (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by it under sub-paragraph (a) to the airport operator concerned and the Department.]

**F38** 2002 c. 40

#### References under Article 34: powers of investigation

**35B.**—(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 34 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

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- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.
- (5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

### Reports on references

- 36.—**(1) In making a report on any reference under Article 34, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any course of conduct specified in the reference has operated, or might be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which that course of conduct has had or might be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by the imposition of any conditions in relation to the airport in question, or by the modification of any conditions already in force in relation to it, shall specify in the report the conditions that should be imposed or (as the case may be) the modifications that should be made.
- (2) The Commission's conclusions on a reference under Article 34(1) so far as relating to the maximum amounts referred to in sub-paragraph (a) of that provision shall take the form of recommendations as to what those maximum amounts should be during the five years in question; and any such recommendations may do any of the things referred to in sub-paragraphs (a) to (c) of Article 31(5).

[<sup>F39</sup>(2A) For the purposes of Article 37(2), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(2B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 34 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

*Para. (3) rep. by 1998 c. 41*

[<sup>F40</sup>(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under Article 34.

(4A) In making any report on a reference under Article 34 the Commission must have regard to the following considerations before disclosing any information.

(4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4C) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4C)(a) or (b) is necessary for the purposes of the report.]
- (5) A report of the Commission on any reference under Article 34 shall be sent to the CAA.
- (6) On receiving such a report, the CAA—
- (a) shall send a copy of the report to the Department and to the airport operator concerned; and
  - (b) subject to any direction given by the Department under paragraph (7), shall publish the report in such manner as the CAA considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, it may, before the end of the period of 21 days beginning with the day on which it receives the copy of the report, direct the CAA to exclude that matter from the report as published under paragraph (6).

**F39** 2002 c. 40

**F40** 2002 c. 40

### **Imposition or modification of conditions following Commission's report**

- 37.—**(1) Where the CAA—
- (a) is required to impose any such conditions as are mentioned in Article 31(3), or to make any such modifications as are mentioned in Article 31(4), in respect of any such maximum amounts as are there mentioned; and
  - (b) has received a report made by the Commission under Article 36 and containing their recommendations as to what those maximum amounts should be,
- the CAA shall impose any such conditions in accordance with Article 31(3) or make any such modifications in accordance with Article 31(4) (as the case may be).
- (2) Where the CAA has received a report of the Commission on a reference under Article 34 and the report—
- (a) includes conclusions to the effect that any course of conduct within the scope of the reference has operated or might be expected to operate against the public interest;
  - (b) specifies effects adverse to the public interest which that course of conduct has had or might be expected to have;
  - (c) includes conclusions to the effect that those effects could be remedied or prevented by the imposition of any conditions in relation to the airport in question or by the modification of any conditions already in force in relation to it; and
  - (d) specifies conditions or modifications by which those effects could be remedied or prevented,
- the CAA shall, subject to paragraph (3), impose such conditions, or make such modifications of any conditions already in force, in relation to the airport in question as the CAA considers appropriate for the purpose of remedying or preventing the adverse effects specified in the report.
- (3) In the case of a report of the Commission on a reference under Article 34(1), the Department may, if it thinks fit, direct that, notwithstanding that the report satisfies the requirements of sub-

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paragraphs (a) to (d) of paragraph (2), the CAA shall not impose any conditions or make any modifications as mentioned in that paragraph.

(4) Before imposing any conditions or making any modifications as mentioned in paragraph (1) the CAA shall have regard to the recommendations referred to in sub-paragraph (b) of that paragraph; and before imposing any conditions or making any modifications as mentioned in paragraph (2) the CAA shall have regard to the conditions or modifications referred to in sub-paragraph (d) of that paragraph.

(5) Where the CAA has imposed any conditions or made any modifications as mentioned in paragraph (1) or (2), it shall publish the following matters, namely—

- (a) particulars of the conditions or modifications in question; and
- (b) in so far as those conditions or modifications do not accord with the recommendations referred to in paragraph (1)(b), or (as the case may be) with the conditions or modifications referred to in paragraph (2)(d), a statement of the CAA's reasons for not implementing the Commission's report,

in such manner as it considers appropriate for the purpose of bringing those matters to the attention of persons likely to be affected by them.

### **Charges to be paid by airport operators in respect of Commission's expenses**

**38.**—(1) The Department may, in accordance with the following provisions of this Article, provide by regulations for annual charges to be payable by airport operators in respect of the expenses incurred by the Commission in carrying out investigations, and reporting, on references to which this paragraph applies.

(2) Paragraph (1) applies to any reference made to the Commission under Article 34 other than a reference under paragraph (1) of that Article which relates to the first period of five years for which any such conditions as are mentioned in Article 31(3) are to be in force in relation to a particular airport.

(3) Any such regulations as are mentioned in paragraph (1) shall—

- (a) require the Commission—
  - (i) to prepare, in such form and including such information as may be prescribed by the regulations, an annual statement containing an assessment of the expenses incurred by it as mentioned in paragraph (1) in the preceding period of twelve months; and
  - (ii) to send a copy of any such statement to the CAA;
- (b) prescribe the circumstances in which airport operators, being persons having the management of airports in respect of which permissions under this Part are in force, are to be liable to charges under this Article in respect of the expenses of the Commission specified in any such statement;
- (c) provide that, where a particular airport operator is liable to such a charge, the amount of the charge payable by him shall (subject to sub-paragraph (d)) be a proportion of the expenses referred to in sub-paragraph (b) to be determined by reference to such matters or circumstances as may be specified in the regulations; and
- (d) prescribe the maximum amount of any charge under this Article.

(4) Without prejudice to the generality of paragraph (3)(b), any such regulations may provide for an airport operator falling within that provision to be liable to a charge under this Article notwithstanding that none of the expenses there referred to relate to a reference made in respect of an airport managed by him.

(5) Where by virtue of any such regulations a charge under this Article is payable by any airport operator, the CAA shall notify him that he is required to pay that charge to the CAA; and where an



airport operator has been so notified the amount of any such charge shall be recoverable from him as a debt due to the CAA.

(6) Any sums received by the CAA by virtue of this Article shall be paid to the Secretary of State, who shall then pay them into the Consolidated Fund of the United Kingdom.

### *Enforcement of conditions*

#### **Breach of conditions other than accounts conditions: complaints and compliance orders**

39.—(1) Where—

(a) a complaint is made to the CAA in relation to any airport that the airport operator is failing to comply, or has failed to comply and is likely again to fail to comply, with any condition in contravention of Article 30(1); and

(b) that complaint is made—

(i) by any person on whom any airport charges have been levied by the airport operator at the airport (whether actually paid by that person or not); or

(ii) by any other airport operator who claims that the business carried on by him at another airport in the United Kingdom has been or is being materially harmed by the alleged failure to comply with the condition in question,

the CAA shall investigate that complaint (unless the CAA considers that it is frivolous); but nothing in this Article applies to a condition to which any provision of Article 41 applies.

(2) Where any such complaint is made to the CAA by a person not falling within paragraph (1) (b)(i) or (ii), the CAA may investigate the complaint if it thinks fit.

(3) If, having investigated any such complaint, the CAA is satisfied that an airport operator is failing to comply, or has failed to comply and is likely again to fail to comply, with any condition in contravention of Article 30(1), the CAA shall either—

(a) by order make such provision as it considers appropriate for the purpose of securing compliance with that condition and for remedying any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply with that condition; or

(b) subject to Article 31(6) and paragraph (4), modify the condition in such manner as it considers appropriate in all the circumstances.

(4) The CAA shall not under paragraph (3)(b) modify a condition in such a manner as would permit of the occurrence, or (as the case may be) recurrence, of any effects adverse to the public interest which have been specified by the Commission in a report made by them on any reference under Article 34 in respect of the airport in question.

(5) If, having investigated any such complaint, the CAA is satisfied that an airport operator has failed to comply with any condition in contravention of Article 30(1) (but not that he is for the time being failing to comply with it or is likely again to fail to comply with it) the CAA may by order make such provision as it considers appropriate for remedying any loss or damage sustained, or injustice suffered, by any person in consequence of the failure to comply with that condition.

(6) An order under paragraph (3)(a) or (5)—

(a) shall require the airport operator concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified; and

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- (b) shall, as respects any such requirement, take effect (according to the terms of the order) either as soon as a copy of it is served on the airport operator or at such later time as may be specified in it by the CAA; and
- (c) may be revoked by the CAA at any time.

(7) A copy of any such order shall be served by the CAA on the airport operator in the prescribed manner; and references in this and the following Article to the service of a copy of such an order on an airport operator shall be construed accordingly.

### **Validity and effect of compliance orders**

**40.**—(1) If an airport operator is aggrieved by any compliance order applying to him by virtue of Article 39 and desires to question the validity of the order on the ground—

- (a) that the order is not within the powers of that Article; or
- (b) where any regulations under section 7(2) of the 1982 Act provide for regulating the procedure to be followed by the CAA in the performance of its functions under Article 39, that any requirement of those regulations has not been complied with in relation to the order,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.

(2) On any such application the High Court may, if satisfied—

- (a) that the compliance order is not within the powers of Article 39; or
- (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as is mentioned in paragraph (1)(b),

quash the order or any provision of the order.

(3) Except as provided by this Article, the validity of a compliance order shall not be questioned in any legal proceedings whatever.

(4) No criminal proceedings shall, by virtue of the making of a compliance order, lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.

(5) The obligation to comply with a compliance order is a duty owed to any person who may be affected by a contravention of it.

(6) Where a duty is owed by virtue of paragraph (5) to any person—

- (a) any breach of the duty which causes that person to sustain loss or damage; and
- (b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result,

shall be actionable at the suit or instance of that person.

(7) In any proceedings brought against any person in pursuance of paragraph (6)(a), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(8) Without prejudice to any right which any person may have by virtue of paragraph (6) (a) to bring civil proceedings in respect of any contravention or apprehended contravention of a compliance order, the CAA may enforce compliance with any such order by civil proceedings for an injunction or for any other appropriate relief.

(9) Where it appears to the CAA that an airport operator has contravened a compliance order and is unlikely to comply with it in the immediate future the CAA may, instead of proceeding under

paragraph (8), revoke the permission for the time being in force under this Part in respect of the airport to which the contravention relates.

(10) Where any such permission is revoked by reason of an airport operator's contravention of a compliance order, then (notwithstanding Article 29(4)) a permission shall not again be granted under this Part in respect of the airport in question so long as he remains the airport operator unless it appears to the CAA that, if the CAA were to impose in relation to the airport any condition corresponding to the one whose breach gave rise to the making of the compliance order, he would comply with that condition.

(11) In this Article—

“act”, in relation to any person, includes any failure to do an act which he is under a duty to do and “done” shall be construed accordingly;

“compliance order” means an order under Article 39(3)(a) or (5);

“contravention”, in relation to a compliance order, includes any failure to comply with it.

**Modifications etc. (not altering text)**

**C2** Art. 40 modified (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 22(2)**

**C3** Art. 40(4) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 63(1), 94(1), **Sch. 6 para. 26** (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), **art. 2(a)**

**Breach of accounts conditions: criminal penalties, etc.**

**41.—**(1) Any airport operator who fails to comply with any condition imposed in accordance with Article 31(2)(a) (in pursuance of either Article 31(1) or Article 32(1)) shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) Any airport operator who, in the case of any condition imposed in accordance with Article 31(2)(b) (in pursuance of either Article 31(1) or Article 32(1)), fails to comply with that condition before the end of the period allowed for compliance with it by virtue of that or any other such condition shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and

(b) on a second or subsequent summary conviction, to a fine of one-tenth of level 5 on the standard scale for each day on which the contravention is continued.

(3) Where an airport operator has failed to comply with any such condition as is mentioned in paragraph (1), then (whether or not proceedings are brought under that paragraph in respect of that contravention) the CAA may impose, in relation to the airport to which the contravention relates, such conditions as the CAA considers appropriate with respect to the publication of any matter to whose non-disclosure the contravention relates; and if the airport operator fails to comply with any condition so imposed before the end of the period allowed for compliance with it by virtue of that or any other such condition he shall be guilty of an offence and liable as mentioned in sub-paragraphs (a) and (b) of paragraph (2).

(4) In any proceedings for an offence under this Article it shall be a defence for the person charged to prove—

(a) in the case of an offence under paragraph (1), that he took all reasonable steps for securing compliance with the condition in question;

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(b) in the case of an offence under paragraph (2) or (3), that he took all reasonable steps for securing compliance with the condition in question before the end of the period mentioned in that paragraph.

(5) Any reference in this Article to an airport operator failing to comply with a condition is a reference to his failing to do so in contravention of Article 30(1).

### *Supplementary*

#### **Supplementary provisions relating to conditions**

**42.**—(1) Any condition imposed by the CAA under this Part otherwise than in pursuance of Article 31(3) shall (subject to the provisions of this Article and to the continuation in force of a permission under this Part in respect of the airport in question) either remain in force for a particular period or remain in force without limit of time, as the CAA may determine; and when imposing any such condition the CAA shall accordingly either—

- (a) specify the period in question; or
- (b) specify that it is a condition whose duration is unlimited,

as the case may require.

(2) Where the CAA has in the case of any condition specified a period under paragraph (1)(a), the CAA may, if it thinks fit, determine that that period shall be extended by such period as may be specified in its determination.

(3) Where any such conditions as are mentioned in Article 31(2) are in force in relation to an airport, the CAA may at any time modify or revoke those conditions; but the CAA shall not revoke any such conditions otherwise than in connection with replacing them with further conditions unless the conditions revoked were imposed in pursuance of Article 32(1).

(4) Where any such conditions as are mentioned in Article 32(2) are in force in relation to an airport (being conditions imposed otherwise than following a reference to the Commission under Article 34(3)) the CAA may at any time modify or revoke those conditions unless—

- (a) paragraph (5)(a) operates to preclude the modification of the conditions under this paragraph; or
- (b) that provision has previously so operated and the conditions were modified following a reference to the Commission made in pursuance of paragraph (5)(b).

(5) Before making any modifications under paragraph (4) whose object is the more effective securing of the purpose for which the conditions concerned were imposed the CAA shall notify the airport operator concerned of the course of conduct within Article 32(3)(a), (b) or (c) which it appears to the CAA that he is still pursuing and of the modifications which it proposes to make; 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);

and, in relation to any such reference, Article 34(3) shall have effect as if references to Article 32(6) were references to this paragraph.

(6) Where any conditions have been imposed or modified by the CAA in relation to an airport for the purpose of remedying or preventing any such adverse effects as are mentioned in Article 37(2), the CAA may—

- (a) make such modifications or further modifications of those conditions as it considers appropriate; or
- (b) revoke the conditions,

as long as the modifications or revocation in question would not permit of the occurrence or (as the case may be) recurrence of any of those adverse effects.

(7) Where under this Part the CAA imposes any condition in relation to an airport or modifies, extends the period of operation of, or revokes, any such condition the CAA shall notify the airport operator of the imposition, modification or revocation of the condition, or (as the case may be) of the extension of the period of its operation, in such manner as may be prescribed.

(8) Where a permission is in force under this Part in respect of an airport, the airport operator shall, if so required by any person and on payment of such reasonable fee as the airport operator may determine, provide that person with a copy of that permission and of any conditions for the time being in force under this Part in relation to the airport.

### **Special provisions relating to groups of airports**

**43.**—(1) Where it appears to the CAA that two or more airports are airports serving the same area and either—

- (a) that they are managed by the same airport operator; or
- (b) that they are owned by the same person, or by members of the same group of companies, and they operate as a group of airports whose activities are co-ordinated by the airport operators concerned,

any conditions imposed or modified by the CAA in pursuance of Article 31(3) or (4) in relation to any one of those airports may be framed so as to prescribe a limit or limits operating by reference to the aggregate of amounts levied by way of airport charges at that airport and amounts so levied at the other airport or airports.

(2) For the purposes of paragraph (1) a body corporate and each of its subsidiaries shall be treated as members of a group of companies.

(3) In paragraph (1) the reference to airports serving the same area is a reference to airports in the case of which a substantial number of the passengers departing from, or arriving at, the airports by air (other than those interrupting their flights there or transferring from one flight to another) have as their original points of departure, or (as the case may be) as their ultimate destinations, places situated within the same area.

### **Functions in relation to permissions and conditions initially exercisable by the Department**

**44.**—(1) If the Department, at any time during the period of six months beginning with the date of the coming into operation of Article 28, notifies the CAA that it proposes to perform, in relation to any airport which is—

- (a) due to become subject to economic regulation under this Part at the end of that period by virtue of Article 28(2); and
- (b) specified in the notification,

the functions of the CAA specified in paragraph (2), those functions shall (subject to paragraph (4)) be performed in relation to the airport by the Department and not by the CAA, and references to the CAA in the provisions mentioned in paragraph (2) and in Articles 42 and 48 shall, so far as may be necessary for the purpose or in consequence of the transfer of those functions, be read as references to the Department.

(2) The functions of the CAA referred to in paragraph (1) are—

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- (a) its functions under Article 29 with respect to the grant or refusal of a permission under this Part; and
  - (b) if the airport in question is for the time being designated for the purposes of Article 31, its functions under that Article and Article 43 with respect to the imposition of conditions in accordance with Article 31(1)(a); and
  - (c) if the airport in question is not so designated, its functions under Article 32(1) with respect to the imposition of such conditions as are there mentioned at the time of granting a permission under this Part.
- (3) If the Department so determines at the time of granting a permission under this Part in respect of an airport in pursuance of this Article, that airport shall, instead of becoming subject to economic regulation under this Part at the end of the period of six months referred to in paragraph (1), become so subject on such earlier date as may be specified by the Department in its determination.
- (4) Where functions of the CAA under Article 31 or 32(1) fall to be performed by the Department by virtue of this Article, the Department—
- (a) shall perform those functions in the manner which it considers is best calculated to achieve the objectives specified in sub-paragraphs (a) to (d) of Article 30(2); and
  - (b) shall perform those functions with respect to the imposition of conditions in pursuance of Article 31(3) without there having been made any prior reference to the Commission in connection with the imposition of any such conditions.
- (5) Where, before a notification is given by the Department under paragraph (1) in the case of an airport, the airport operator has already made an application in accordance with Article 29 to the CAA, then, as from the date when the notification is given—
- (a) the application shall be treated as if it had been so made to the Department; and
  - (b) anything previously done by or in relation to the CAA in connection with the application shall be treated as if done by or in relation to the Department;
- and any fee paid by him in pursuance of Article 29(2)(b) shall be refunded to him by the CAA.
- (6) The CAA shall provide such advice, assistance and information to the Department as the Department may require in connection with the performance by the Department of any functions under this Part (whether by virtue of this Article or otherwise).

### **Orders under the 1973 Act or 1980 Act modifying or revoking conditions**

**45**<sup>F41</sup>.—<sup>F42</sup>(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of any relevant conditions to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by an airport operator; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by an airport operator; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the carrying on of any operational activities relating to one or more than one airport.]

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(2) In paragraph (1) “relevant conditions” means any conditions for the time being in force under this Part other than any conditions imposed or modified in pursuance of Article 31(3) or (4).

*Para. (3) rep. by 2002 c. 40*

[<sup>F42</sup>(4) Expressions used in paragraph (1A) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.]

**F41** mod. by SI 2003/1592

**F42** 2002 c. 40

#### **Application of Part IV to associated companies of airport operators**

**46.** Schedule 6 shall have effect with respect to the application of the preceding provisions of this Part to associated companies of airport operators.

#### **Co-ordination of exercise of functions by CAA and Director General of Fair Trading**

**47.** The Department may by regulations make such provision as it thinks expedient—

(a) for the purpose of regulating—

(i) the performance by the CAA of functions under this Part; and

(ii) the performance by [<sup>F43</sup> the Office of Fair Trading of functions under the Enterprise Act 2002],

in cases where, apart from the regulations, such functions would be authorised or required to be performed by the CAA and [<sup>F43</sup> the Office of Fair Trading] respectively in relation to the same matter; and

(b) for the purpose of prescribing the procedure to be followed in such cases by the CAA and [<sup>F43</sup> the Office of Fair Trading].

**F43** 2002 c. 40

#### **Furnishing of information, etc. to CAA**

**48.—**(1) The CAA may by notice in writing served on any person require him at such time or times as may be specified in the notice—

(a) to produce to the CAA such documents or descriptions of documents specified in the notice; and

(b) to furnish to the CAA, in such form as may be specified in the notice, such accounts, estimates, returns or other information,

as the CAA may reasonably require for the purpose of performing its functions under this Part or for the purpose of giving any advice, assistance or information to the Department in connection with the performance by the Department of any functions under this Part.

(2) A person shall not by virtue of paragraph (1) be compelled—

(a) to produce any documents which he could not be compelled to produce in civil proceedings before the High Court; or

(b) in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

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(3) Any person who fails without reasonable excuse to comply with the requirements of a notice served on him under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who, in purported compliance with the requirements of any such notice, knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

**Modifications etc. (not altering text)**

- C4 Art. 48 modified (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 30(2)**
- C5 Art. 48(3)(4) applied (10.11.2011) by [Airport Charges Regulations 2011 \(S.I. 2011/2491\)](#), **reg. 5(8)**

**Restriction on disclosure of information**

49.—(1) Subject to the following provisions of this Article, no information with respect to any particular business which has been obtained under the provisions of this Part shall, so long as the business continues to be carried on, be disclosed without the consent of the person for the time being carrying it on.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance of any functions under this Order or any of the statutory provisions specified in paragraph (3) of any Minister of the Crown, any Northern Ireland department, the head of any such department, the CAA, the Commission,<sup>[F44]</sup> the Office of Fair Trading], the Director General of Water Services, the Director General of Electricity Supply, the Director General of Electricity Supply for Northern Ireland<sup>[F45]</sup>, the Director General of Gas for Northern Ireland] or a district council;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (c) for the purposes of any civil proceedings brought under this Part or any of the statutory provisions specified in paragraph (3);
- (d) in pursuance of any Community obligation.

(3) The statutory provisions referred to in paragraph (2) are—

- (a) the Trade Descriptions Act 1968<sup>F46</sup>;
- (b) the 1973 Act;
- (c) the Consumer Credit Act 1974<sup>F47</sup>;

*Sub#paras. (d)(e) rep. by SI 2000/311*

- (f) the Estate Agents Act 1979<sup>F48</sup>;
- (g) the 1980 Act;
- (h) the 1982 Act and any Order in Council made under section 60 of that Act (Air Navigation Orders);
- (i) the Airports Act 1986<sup>F49</sup>;
- (j) the Consumer Protection Act 1987<sup>F50</sup>;
- (k) the Consumer Protection (Northern Ireland) Order 1987<sup>F51</sup>;
- (l) <sup>F52</sup>.....



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- (m) the Electricity Act 1989<sup>F53</sup>;
- (n) the Water Industry Act 1991<sup>F54</sup>;
- (o) the Water Resources Act 1991<sup>F55</sup>;
- (p) the Electricity (Northern Ireland) Order 1992<sup>F56</sup>.
- [<sup>F45</sup>(q) the Gas (Northern Ireland) Order 1996.]
- (r) <sup>F57</sup> .....
- [<sup>F58</sup>(s) the Competition Act 1998.]
- [<sup>F59</sup>(t) the Enterprise Act 2002]
- [<sup>F60</sup>(u) the Water and Sewerage Services (Northern Ireland) Order 2006.]
- [<sup>F61</sup>(v) the Business Protection from Misleading Marketing Regulations 2008;
- (w) the Consumer Protection from Unfair Trading Regulations 2008.]
- [<sup>F62</sup>(x) the Airport Charges Regulations 2011.]
- (4) Nothing in paragraph (1) shall be construed—
  - (a) as limiting the matters which may be included in, or made public as part of, a report of the Commission under Article 36; or
  - (b) as applying to any information which has been made public as part of such a report.
- (5) Any person who discloses any information in contravention of this Article shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

<b>F44</b>	2002 c. 40
<b>F45</b>	1996 NI 2
<b>F46</b>	1968 c.29
<b>F47</b>	1974 c.39
<b>F48</b>	1979 c.38
<b>F49</b>	1986 c.31
<b>F50</b>	1987 c.43
<b>F51</b>	1987 NI 20
<b>F52</b>	Art. 49(3)(l) revoked (26.5.2008) by Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(1)(3), Sch. 2 para. 84(a), <b>Sch. 4 Pt. 2</b> (with reg. 28(2)(3))
<b>F53</b>	1989 c.29
<b>F54</b>	1991 c.56
<b>F55</b>	1991 c.57
<b>F56</b>	1992 NI 1
<b>F57</b>	Art. 49(3)(r) revoked (20.7.2007) by The EC Competition Law (Articles 84 and 85) Enforcement (Revocation) Regulations 2007 (S.I. 2007/1846), reg. 3(1), <b>Sch.</b>
<b>F58</b>	SI 1999/506
<b>F59</b>	2002 c. 40
<b>F60</b>	Art. 49(3)(u) added (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), <b>Sch. 12 para. 34</b> (with arts. 8(8), 121(3), 307); S.R. 2007/194, <b>art. 2(2)</b> , Sch. 1 Pt. II (with art. 3, Sch. 2)
<b>F61</b>	Art. 49(3)(v)(w) added (26.5.2008) by Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(1), <b>Sch. 2 para. 84(b)</b> (with reg. 28(2)(3))

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**F62** Art. 49(3)(x) inserted (10.11.2011) by Airport Charges Regulations 2011 (S.I. 2011/2491), reg. 31, Sch. 3 para. 4

**Modifications etc. (not altering text)**

**C6** Art. 49 applied (10.11.2011) by Airport Charges Regulations 2011 (S.I. 2011/2491), reg. 31, Sch. 3 para. 3

## PART V

### TRANSFER OF UNDERTAKING OF NORTHERN IRELAND AIRPORTS LIMITED

#### *Introductory*

#### **Interpretation of this Part**

**50.**—(1) In this Part—

“debenture” includes debenture stock;

“the Holding Company” means the Northern Ireland Transport Holding Company established under section 47 of the Transport Act (Northern Ireland) 1967<sup>F63</sup>;

“NIAL” means the subsidiary of the Holding Company incorporated under the name of Northern Ireland Airports Limited;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“statutory accounts” means any accounts (including group accounts) prepared by a company for the purpose of any provision of [<sup>F64</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)];

“the successor company” has the meaning assigned to it by Article 51(1);

“the transfer date” has the meaning assigned to it by Article 54(2);

“transferee”, in relation to any transfer of assets and liabilities effected under Article 54, means the body to which they are so transferred;

“transfer scheme” has the meaning assigned to it by Article 54(1).

(2) Subject to Article 54(5), in this Part any reference to the Crown is a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

- (a) by, or by a nominee of, the Department or the Department of Finance and Personnel; or
- (b) by a company which is itself wholly owned by the Crown.

(4) Any reference in this Part (except Article 52) to assets and liabilities of NIAL—

- (a) is a reference to assets and liabilities to which NIAL is entitled or subject immediately before the transfer date, whether or not capable of being transferred or assigned by NIAL;
- (b) in relation to assets which consist of property of NIAL, is a reference to property whether situated in Northern Ireland or elsewhere; and

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(c) in relation to assets which consist of other rights and to liabilities of NIAL, is a reference to rights to which NIAL is entitled, or (as the case may be) liabilities to which NIAL is subject, whether under the law of Northern Ireland or under the law of any country or territory outside Northern Ireland.

(5) Paragraph (4) applies to airport assets and airport liabilities of the Holding Company as it applies to assets and liabilities of NIAL, but with the substitution for references to NIAL of references to the Holding Company.

(6) In this Part references to “airport assets” and “airport liabilities” of the Holding Company are references, respectively, to the assets and liabilities of the Holding Company which, either wholly or in part, subsist for the purposes of, or in connection with, or are otherwise attributable to, the functions exercisable by the Holding Company immediately before the transfer date by virtue of section 16 of the Aerodromes Act (Northern Ireland) 1971<sup>F65</sup>.

**F63** 1967 c.37 (NI)

**F64** Art. 50(1): words in the definition of "statutory accounts" 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(3)** (with arts. 6, 11, 12)

**F65** 1971 c.16 (NI)

### The successor company

**51.**—(1) The Department may by order nominate as the successor company for the purposes of this Order a company which—

- (a) is a company limited by shares [<sup>F66</sup>(within the meaning of section 3 of the Companies Act 2006)]; and
- (b) is wholly owned by the Crown;

and references in this Order to “the successor company” are references to the company so nominated.

(2) In the Northern Ireland Assembly Disqualification Act 1975<sup>F67</sup>, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Director of the successor company (within the meaning of Part V of the Airports (Northern Ireland) Order 1994), being a director nominated or appointed by a Northern Ireland department or by a person acting on behalf of a Northern Ireland department” .

**F66** Words in art. 51(1)(a) 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(4)** (with art. 10)

**F67** 1975 c.25

### *Reorganisation of certain assets and liabilities of NIAL and the Holding Company*

### The reorganisation scheme

**52.**—(1) Before such date as the Department may direct, the Holding Company shall make a scheme (referred to in this Article and Article 53 as the “reorganisation scheme”) for—

- (a) the transfer to the Holding Company of the estate of NIAL in specified land;
- (b) the surrender by NIAL of any specified lease; and

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- (c) the granting by the Holding Company to NIAL of a lease of specified land on specified terms.
- (2) On the specified day—
  - (a) the estate of NIAL in any land specified under paragraph (1)(a) shall, by virtue of this paragraph, vest in the Holding Company; and
  - (b) any lease specified under paragraph (1)(b) shall be deemed to have been surrendered by NIAL.
- (3) It shall be the duty of the Holding Company and of NIAL before the transfer date to enter into a lease of land specified under paragraph (1)(c) on terms so specified.
- (4) The reorganisation scheme may make such supplementary, incidental and consequential provisions as the Holding Company considers appropriate.
- (5) In this Article “specified” means specified in the reorganisation scheme.

### **Functions of the Department in relation to the reorganisation scheme**

**53.**—(1) The reorganisation scheme shall not take effect unless it is approved by the Department; and the Department may modify the reorganisation scheme before approving it.

- (2) If—
  - (a) the Holding Company fails, before the date specified in the Department's direction under Article 52(1), to submit the reorganisation scheme for the approval of the Department; or
  - (b) the Department decides not to approve the reorganisation scheme that has been submitted to the Department by the Holding Company (either with or without modifications),
 the Department may itself make the reorganisation scheme.

(3) It shall be the duty of the Holding Company and of NIAL to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with the Holding Company.

### *Transfer of certain assets and liabilities of NIAL and the Holding Company*

#### **The transfer scheme**

**54.**—(1) Before such date as the Department may direct, the Holding Company shall make a scheme (the “transfer scheme”) for the transfer to the successor company or the Department of—

- (a) specified airport assets and airport liabilities of the Holding Company; and
- (b) specified assets and liabilities of NIAL.
- (2) On such day as the Department may by order appoint (the “transfer date”)—
  - (a) such specified assets and liabilities as are allocated under the transfer scheme to the successor company shall, by virtue of this paragraph, become assets and liabilities of that company; and
  - (b) such specified assets and liabilities as are allocated under that scheme to the Department shall, by virtue of this paragraph, become assets and liabilities of the Department.
- (3) The provisions of Schedule 7 shall apply in relation to any transfer effected under paragraph (2); and that paragraph shall have effect subject to the provisions of that Schedule.
- (4) The transfer scheme may—

- (a) specify the assets and liabilities to be transferred to a particular body by describing or identifying them in such manner; and
  - (b) make such supplementary, incidental and consequential provisions,
- as the Holding Company considers appropriate.

(5) The provisions of the transfer scheme shall bind the Crown, including the Crown in right of Her Majesty's Government in the United Kingdom, to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(6) In this Article "specified" means specified in the transfer scheme.

### **Functions of the Department in relation to the transfer scheme**

**55.**—(1) The transfer scheme shall not take effect unless it is approved by the Department; and the Department may modify the transfer scheme before approving it.

(2) If—

- (a) the Holding Company fails, before the date specified in the Department's direction under Article 54(1), to submit the transfer scheme for the approval of the Department; or
- (b) the Department decides not to approve the transfer scheme that has been submitted to the Department by the Holding Company (either with or without modifications),

the Department may itself make the transfer scheme.

(3) It shall be the duty of the Holding Company and of NIAL to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with the Holding Company.

### **Powers of Department and the Holding Company after transfer**

**56.**—(1) The Department shall have power to hold, manage and dispose of any assets transferred to it under Article 54 and to discharge any liabilities so transferred.

(2) The power of the Department under paragraph (1) to dispose of any assets transferred to it under Article 54 includes power to dispose of those assets to a body corporate formed by the Department for the purpose of exercising on behalf of the Department its functions under paragraph (1).

(3) The repeal by this Order of section 16 of the Aerodromes Act (Northern Ireland) 1971<sup>F68</sup> shall come into operation on the transfer date, but, notwithstanding that repeal, the Holding Company shall on and after that date have power—

- (a) to hold, manage and dispose of any airport assets of the Holding Company which are not transferred under Article 54 and to discharge any airport liabilities of the Holding Company which are not so transferred; and
- (b) to acquire, hold, manage and dispose of any assets of NIAL which are not transferred under Article 54 and to discharge any liabilities of NIAL which are not so transferred.

**F68** 1971 c.15 (NI)

*Status: Point in time view as at 10/11/2011.*

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### *Ownership of the successor company*

#### **Initial Government holding in the successor company**

**57.**—(1) As a consequence of the vesting in the successor company of any assets and liabilities under Article 54, the company shall issue such securities of the company as the Department may direct to the Department or the Department of Finance and Personnel.

(2) The Department shall not give a direction under paragraph (1) at a time when the successor company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued at such time or times and on such terms as the Department may direct.

(4) Shares in the successor company which are issued under this Article—

(a) shall be of such nominal value as the Department may direct; and

(b) shall be issued as fully paid and treated for the purposes of [F69 the Companies Acts (as defined in section 2(1) of the Companies Act 2006)] as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) The Department shall not dispose of any securities issued under this Article without the consent of the Department of Finance and Personnel.

F70(6) For the purposes of [F71 the Companies Acts (as defined in section 2 of the Companies Act 2006)], [F72 the Company Directors Disqualification (Northern Ireland) Order 2002] and the Insolvency (Northern Ireland) Order 1989<sup>F73</sup> the Crown is not to be treated as a shadow director of the successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

**F69** Words in art. 57(4)(b) 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(5)** (with art. 10)

**F70** By [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 197(4)** (with arts. 6, 11, 12) it is provided that in art. 57(6) for "the Companies Order" substitute (6.4.2008) "the Companies Acts (as defined in section 2 of the Companies Act 2006)"

**F71** Words in art. 57(6) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3)(a), 10(1), **Sch. 4 para. 86** (with saving in art. 12)

**F72** 2002 NI 4

**F73** 1989 NI 19

#### **Government investment in securities of the successor company**

**58.**—(1) The Department or the Department of Finance and Personnel may at any time acquire—

(a) securities of the successor company; or

(b) rights to subscribe for any such securities.

(2) The Department shall not dispose of any securities or rights acquired under this Article without the consent of the Department of Finance and Personnel.

#### **Exercise of functions through nominees**

**59.**—(1) The Department or the Department of Finance and Personnel may, for the purposes of Article 57, 58 or 65, appoint any person to act as the nominee, or one of the nominees, of the Department or the Department of Finance and Personnel; and—

- (a) securities of the successor company may be issued under Article 57 or 65 to any nominee of the Department or the Department of Finance and Personnel appointed for the purposes of that Article; and
- (b) any such nominee appointed for the purposes of Article 58 may acquire securities or rights under that Article,

in accordance with directions given by the Department or by the Department of Finance and Personnel.

(2) Any person holding any securities or rights as a nominee of the Department or the Department of Finance and Personnel under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department or the Department of Finance and Personnel may direct.

### *Finances of the successor company*

#### **Statutory reserves**

**60.**—(1) If the Department so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction shall be carried by the successor company to a reserve (“the statutory reserve”).

(2) The sum specified under paragraph (1) shall not exceed the aggregate of—

- (a) the accumulated realised profits of NIAL; and
- (b) any accumulated realised profits arising (after compliance with any direction under Article 65(2)) by virtue of the extinguishment of liabilities of the successor company by an order under Article 65(1).

(3) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(4) Notwithstanding paragraph (3), the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of [F74 section 831(4)(d) of the Companies Act 2006]; but for the purpose of determining under [F75 that section] whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of [F76 section 831(4)(c) of that Act] as if it were unrealised profits of the company.

**F74** Words in art. 60(4) 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(5)(a)** (with arts. 6, 11, 12)

**F75** Words in art. 60(4) 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(5)(b)** (with arts. 6, 11, 12)

**F76** Words in art. 60(4) 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(5)(c)** (with arts. 6, 11, 12)

#### **Statutory accounts**

**61.**—(1) The following provisions of this Article shall have effect for the purposes of any statutory accounts of the successor company.

(2) The vesting in the successor company under Article 54 of assets and liabilities of NIAL shall be taken to have been effected immediately after the end of the last complete financial year of NIAL to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which NIAL was entitled or subject immediately before the end of the year as are determined by or under the transfer scheme.

*Status: Point in time view as at 10/11/2011.*

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(3) The value of any asset and the amount of any liability which is taken under paragraph (2) to have been vested in the successor company shall be taken to have been the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by NIAL in respect of the last complete financial year of NIAL to end on or before the transfer date.

(4) The amount to be included in respect of any item shall be determined as if anything done by NIAL (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included in any reserves of the successor company as representing the company's accumulated realised profits shall be determined as if any profits realised and retained by NIAL had been realised and retained by the successor company.

(6) Paragraphs (2) to (5) apply in relation to airport assets and airport liabilities of the Holding Company as they apply in relation to assets and liabilities of NIAL but with the substitution for references to NIAL of references to the Holding Company.

(7) In this Article “financial year” has the meaning assigned to it by [<sup>F77</sup>section 390 of the Companies Act 2006].

**F77** Words in art. 61(7) 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(6)** (with arts. 6, 11, 12)

### **Temporary restrictions on borrowings, etc.**

**62.**—(1) If articles of association of the successor company confer on the Department powers exercisable with the consent of the Department of Finance and Personnel for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law or any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of the successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this Article “the group” means the successor company and all of its subsidiaries taken together.

### **Government lending to the successor company**

**63.**—(1) Subject to Article 66, the Department may make loans of such amounts and on such terms and conditions, including terms and conditions as to security, as the Department thinks fit to the successor company at any time before it ceases to be wholly owned by the Crown.

(2) Subject to Article 65, any loans which the Department makes under this Article shall be repaid to the Department at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department may direct.

(3) Expenditure incurred or to be incurred by the Department in making loans under this Article shall be defrayed by means of sums charged on and issued out of the Consolidated Fund.



### **Government guarantees for loans made to the successor company**

64.—(1) Subject to Article 66, the Department may guarantee, in such manner and on such terms as the Department may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Department by the successor company at any time before it ceases to be wholly owned by the Crown.

(2) Immediately after a guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(3) Any sums required by the Department for fulfilling a guarantee under this Article shall be charged on and issued out of the Consolidated Fund.

(4) The Department of Finance and Personnel may borrow money for the purpose of providing for issues out of the Consolidated Fund under paragraph (3).

(5) If any sums are issued in fulfilment of a guarantee given under this Article the successor company shall make to the Department, at such times and in such manner as the Department may direct,—

- (a) payments of such amounts as the Department may direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may direct.

### **Conversion or discharge of certain loans or advances, etc.**

65.—(1) The Department may by order extinguish all or any of the liabilities of the successor company in respect of the principal of such relevant loans as may be specified in the order.

(2) Where the Department has made an order under paragraph (1) and the Department considers it appropriate to do so, the Department may give a direction under this paragraph to the successor company; and the successor company shall, as a consequence of the making of the order, issue such securities as may be specified or described in the direction to the Department or to the Department of Finance and Personnel.

(3) For the purposes of the statutory accounts of the successor company, the value at the time of its issue of any such security shall be taken—

- (a) in the case of a share, to have been equal to its nominal value; and
- (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) The Department shall not—

- (a) make an order under paragraph (1) extinguishing the liability of the successor company; or
- (b) give a direction under paragraph (2) for the issue of securities,

at a time when the successor company has ceased to be wholly owned by the Crown.

(5) Except as may be agreed between the Department and the successor company, where that company is directed under this Article to issue debentures—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and

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- (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.
- (6) For the purposes of paragraph (5) any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.
- (7) Paragraphs (3) to (5) of Article 57 shall apply for the purposes of this Article as they apply for the purposes of that Article.
- (8) In this Article “relevant loan” means—
  - (a) any loan made, or deemed to have been made, by the Department or from the Consolidated Fund the liability to repay which vests in the successor company under Article 54;
  - (b) any loan made to that company by the Department under Article 63; and
  - (c) any sums payable under debentures issued as a consequence of the making of an order under this Article.

#### **Financial limits on borrowings, etc.**

- 66.** The aggregate of any amounts outstanding by way of principal in respect of—
- (a) sums issued under Article 64 in fulfilment of guarantees given in respect of loans made to such companies; and
  - (b) relevant loans within the meaning of Article 65,
- shall not exceed £10 million.

#### *Miscellaneous*

#### **Exercise of certain functions of Department under this Part**

- 67.** The Department shall not, except with the consent of the Department of Finance and Personnel, exercise any power under any of the following provisions of this Part, namely—
- (a) Article 51(1);
  - (b) Articles 52 to 55;
  - (c) Article 57(1) to (4);
  - (d) Article 58(1);
  - (e) Article 59;
  - (f) Article 60(1);
  - (g) Article 63(1) and (2);
  - (h) Article 64(1);
  - (i) Article 65.

## PART VI

### SUPPLEMENTARY

#### Directions

**68.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

#### Stamp duty

**69.**—(1) Stamp duty shall not be chargeable on—

(a) any transfer effected by Part V;

(b) the reorganisation scheme, the transfer scheme or any instrument certified by the Department as having been made in pursuance of either of those schemes.

(2) In paragraph (1) “reorganisation scheme” and “transfer scheme” have the meanings assigned to them by Articles 52(1) and 54(1) respectively.

#### Regulations and orders

**70.**—(1) Regulations made by the Department under this Order shall be subject to negative resolution.

(2) Orders made by the Department under this Order (other than orders under Article 1(3), 3, 51(1), 54(2), or paragraph 1 of Schedule 7) shall be subject to negative resolution.

(3) Regulations and orders under this Order may contain consequential, incidental, supplementary and transitional provisions.

#### Transitional provisions, amendments and repeals

**71.**—(1) The transitional provisions contained in Schedule 8 shall have effect.

##### *Para. (2)—Amendments*

(3) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954<sup>F78</sup>, the Department may by order make such modifications of instruments made under statutory provisions as appear to the Department necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instrument” has the meaning assigned to it by section 1(c) of that Act of 1954.

##### *Para. (4)—Repeals*

**F78** 1954 c.33 (NI)

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## SCHEDULES

### SCHEDULE 1

Articles 7(8), 8(5), 9(6), 10(4) and 11(4).

#### PROVISIONS RELATING TO ORDERS UNDER ARTICLES 7 TO 11

##### Procedure for making of orders

**1.—(1)** Before making the order the Department shall publish in the Belfast Gazette and once at least in each of two successive weeks in one or more newspapers circulating in the locality in which the land to which the order relates is situated a notice—

- (a) stating that the Department proposes to make the order;
- (b) specifying the land to which the proposed order relates and stating the general effect of the proposed order;
- (c) specifying a place in that locality where a copy of the draft of the proposed order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of not less than 6 weeks from the date of the last publication of the notice; and
- (d) stating that, within that period, any person may, by notice in writing to the Department, inform it of the grounds on which he objects to the making of the order.

(2) In relation to an order under Article 10 or 11, references in sub-paragraph (1) and in the following provisions of this Schedule to the land to which the order relates shall be construed as references to the road to which the order relates.

**2.** The Department shall, not later than the date on which the notice referred to in paragraph 1 is last published, serve a copy thereof together with a copy of a draft of the order and of any relevant map or plan on—

- (a) the district council in whose district any of the land to which the order relates is situated;
- (b) in the case of an order under Article 7, every person appearing to the Department to be the owner, lessee, or occupier of any land to which the order relates;
- (c) in the case of an order under Article 10, the owner of any cables, mains, sewers, pipes, wires or other apparatus placed under, in, on, over, along or across any road to which the order applies.

**3.—(1)** If, before the expiration of the period referred to in paragraph 1(c), the Department receives an objection from any person on whom a copy of the notice is required to be served under paragraph 2 or from any other person appearing to it to be affected, it may—

- (a) cause a public local inquiry to be held; or
- (b) afford to any person by whom such an objection has been made an opportunity of appearing before and being heard by a person appointed by the Department for the purpose.

(2) For the purposes of this paragraph and paragraph 4 the Department—

- (a) shall disregard any objection which is withdrawn; and
- (b) may disregard any objection if it is satisfied that the objection relates exclusively to matters which can be dealt with in assessing compensation under Schedule 3.

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**4.** After considering—

- (a) any objections duly made to the proposed order; and
- (b) in a case where a public local inquiry is held under paragraph 3(1)(a) or a hearing is held under paragraph 3(1)(b), the report of the person who held that inquiry or hearing,

the Department may make the order either without modification or subject to such modifications as it thinks fit.

**5.** Immediately after the order is made, the Department shall publish in at least one newspaper circulating in the locality in which the land to which the order relates is situated a notice—

- (a) stating that the order has been made;
- (b) specifying the land to which the order relates and stating the general effect of the order; and
- (c) specifying a place in that locality where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours.

**6.** The Department shall serve a copy of the notice referred to in paragraph 5 on every person who has duly objected to the making of the order.

**7.** Any expenses incurred by the Department in exercising, in relation to an order in respect of any airport, its functions under the preceding provisions of this Schedule may be recovered from the airport operator summarily as a civil debt or in any court of competent jurisdiction.

### Challenging validity of order

**8.** If any person aggrieved by the order desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Department or that any requirement of this Schedule has not been complied with in relation to the order, he may, within 6 weeks from the time when notice that the order has been made is first published under paragraph 5, make an application to the High Court and on any such application the High Court—

- (a) may by interim order suspend the operation of the order or of any provision contained therein, either generally or in so far as it affects the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the order or any provision contained therein is not within the powers of the Department, or that the interests of the applicant have been substantially prejudiced by any requirement of this Schedule not having been complied with, may quash the order or any provision contained therein, either generally or in so far as it affects the applicant.

**9.** Subject to the provisions of paragraph 8, the order shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative on the expiration of 6 weeks from the date on which notice of the making of the order is first published under paragraph 5.

## SCHEDULE 2

Article 8(6).

### PROVISIONS RELATING TO DIRECTIONS UNDER ARTICLE 8

#### Notice of giving of directions

**1.—(1)** Immediately after the Department has given the direction, it shall publish in the Belfast Gazette and in one or more newspapers circulating in the locality in which the land to which the direction relates is situated a notice stating that the direction has been given, and shall also serve notice of the direction—

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- (a) in the case of a direction given for the purpose specified in Article 8(3)(a), on every district council in whose district any of the land to which the direction relates is situated;
  - (b) in the case of a direction given for the purpose specified in Article 8(3)(d), on every person appearing to the Department to be an owner, lessee or occupier of any land to which the right of way is appurtenant, and on every district council in whose district any of that land is situated;
  - (c) in the case of a direction given for any other purpose specified in Article 8(3), on every person appearing to the Department to be an owner, lessee or occupier of the land to which the direction relates and on every district council in whose district any of that land is situated;
  - (d) in the case of a direction restricting the installation of apparatus or extinguishing rights to install or maintain apparatus, on every person appearing to the Department to be a person whose rights to install or maintain apparatus are affected by the direction; and
  - (e) in the case of a direction requiring the removal of any apparatus, on the person appearing to the Department to be entitled to maintain the apparatus required to be removed under the direction.
- (2) Any notice given with respect to any direction for the purpose of complying with the requirements of this paragraph shall state the effect of the direction.

### Challenging validity of direction

2. If any person aggrieved by the direction desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Department or that any requirement of this Schedule has not been complied with in relation to the direction, he may, within 6 weeks from the time when notice that the direction has been given is first published under paragraph 1, make an application to the High Court and on any such application the High Court—

- (a) may by interim order suspend the operation of the direction or of any provision contained therein, either generally or in so far as it affects the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the direction or any provision contained therein is not within the powers of the Department, or that the interests of the applicant have been substantially prejudiced by any requirement of this Schedule not having been complied with, may quash the order or any provision contained therein, either generally or in so far as it affects the applicant.

3. Subject to the provisions of paragraph 2, the direction shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative on the expiration of 6 weeks from the date on which notice of the giving of the direction is first published under paragraph 1.

## SCHEDULE 3

Article 13.

### COMPENSATION PAYABLE BY AIRPORT OPERATORS

#### Compensation where property damaged

- 1. Where any property is damaged—
  - (a) in the exercise by a person authorised by an airport operator of a power of entry conferred by Article 4 or in the making of any survey for the purpose of which that power is exercised;

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- (b) in the exercise of a power or right conferred by an order made under Article 7 in relation to an airport;
- (c) in the exercise of a power or right conferred, in pursuance of Article 8(4)(b), by an order made under Article 8 in relation to an airport;
- (d) in the exercise of a power or right conferred by an order made under Article 9 in relation to an airport,

the airport operator shall make good that damage or pay such compensation as may be just in respect of that damage.

### Compensation for disturbance

2. Where any person is disturbed in the enjoyment of any property in consequence of—
- (a) the exercise by a person authorised by an airport operator of a power of entry conferred by Article 4 or in the making of any survey for the purpose of which that power is exercised;
  - (b) the exercise of a power or right conferred by an order made under Article 7 in relation to an airport;
  - (c) the exercise of a power or right conferred, in pursuance of Article 8(4)(b), by an order made under Article 8 in relation to an airport;
  - (d) the exercise of a power or right conferred by an order made under Article 9 in relation to an airport,

the airport operator shall pay such compensation as may be just in respect of that disturbance.

### Compensation for diminution in value of land

- 3.—(1) Any person having an estate in land the value of which is diminished in consequence of—
- (a) the coming into operation of an order made under Article 7 in relation to an airport or the exercise of a right or power conferred by such an order;
  - (b) the coming into operation of a direction given under Article 8 in relation to an airport or the exercise of a power or right conferred, in pursuance of paragraph (4)(b) of that Article, by any order made under that Article in relation to an airport;
  - (c) the exercise of a right or power conferred by an order made under Article 9 in relation to an airport,

shall, subject to sub-paragraph (2), be entitled to recover compensation for the diminution from the airport operator.

(2) Sub-paragraph (1)(b) does not apply to the coming into operation of a direction given under Article 8 for the purpose specified in paragraph (3)(a) of that Article if the building or structure in question constitutes development for which planning permission is required under the Planning (Northern Ireland) Order 1991<sup>F79</sup>.

(3) For the purpose of assessing the amount of any compensation payable under this paragraph, the value of land shall be determined in accordance with rules (2) to (4) in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982<sup>F80</sup>.

**F79** 1991 NI 11

**F80** 1982 NI 9

### Compensation for expenditure incurred

4. An airport operator shall pay compensation in respect of any expenditure reasonably incurred by any person—

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- (a) for the purpose of carrying out work which is required to be carried out by a direction given under Article 8 in relation to the airport;
- (b) in connection with the lawful removal of any apparatus installed in pursuance of an order made under Article 9 in relation to the airport or in connection with so much of any repair, alteration, demolition or removal of any building, structure or erection to which such an order relates as is attributable to the operation of the order.

#### Reduction of compensation

5. The compensation payable to any person by virtue of paragraph 1(c), 2(c) or 3(1)(b) in connection with a direction under Article 8 shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the direction.

#### Disputes as to compensation

6.—(1) Where any dispute arises as to whether compensation is payable under this Schedule, or as to the amount of any such compensation, or as to the persons to whom it is payable, the dispute shall be referred to and determined by the Lands Tribunal.

(2) Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply, with appropriate modifications, to any such determination.

### SCHEDULE 4

Article 18(6).

#### AIRPORT BYELAWS MADE BY AIRPORT OPERATOR OTHER THAN A DISTRICT COUNCIL

##### Penalties for contravention of byelaws

1. The byelaws may provide that a person contravening them shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale for each offence and, in the case of a continuing offence, to a further fine not exceeding one-tenth of level 3 on the standard scale for each day on which the offence continues after conviction.

##### Making and confirmation of byelaws

2. Where the airport operator is a body corporate, the byelaws shall be made under its common seal.

3. The byelaws shall not have effect until they are confirmed by the Department.

4. At least one month before application for confirmation of the byelaws is made to the Department, notice of the intention to apply for confirmation shall be given by the airport operator in one or more newspapers circulating in the locality in which the airport to which the byelaws relate is situated and such notice shall specify a period of not less than one month during which representations on the byelaws may be made to the Department.

5. For at least one month before application for confirmation is made, a copy of the byelaws shall be deposited at the offices of the airport operator at the airport to which the byelaws relate and shall, at all reasonable hours, be open to public inspection free of charge.

6. The airport operator shall, on application made by any person before the byelaws are confirmed, furnish him with a copy of the byelaws or of any part of them on payment of such reasonable fee as the airport operator may determine.



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7. The Department may confirm with or without modifications, or refuse to confirm, any byelaw submitted to it for confirmation, and may fix the date on which a byelaw confirmed by it is to come into operation; and if no date is so fixed, the byelaw shall come into operation at the end of the period of one month beginning with the day on which it is confirmed.

#### Publication of byelaws

8. A copy of the byelaws, when confirmed, shall be printed and deposited at the offices of the airport operator at the airport to which the byelaws relate and shall, at all reasonable hours, be open to public inspection free of charge; and a copy of the byelaws shall on application be furnished to any person on payment of such reasonable fee as the airport operator may determine.

#### Evidence of byelaws

9. The production of a printed copy of a byelaw purporting to be made by an airport operator upon which is endorsed a certificate purporting to be signed by a person authorised for the purpose by the airport operator and stating—

- (a) that the byelaw was made by the airport operator;
- (b) that the copy is a true copy of the byelaw;
- (c) that on a specified date the byelaw was confirmed by the Department; and
- (d) the date, if any, fixed by the Department for the coming into operation of the byelaw,

shall be evidence of the facts stated in the certificate, without proof of the handwriting or authorisation of the person by whom it purports to be signed.

### SCHEDULE 5

Article 25.

#### APPLICATION OF STATUTORY PROVISIONS RELATING TO STATUTORY UNDERTAKERS

##### The Access to the Countryside (Northern Ireland) Order 1983 (NI 8)

1. In Article 2(2) in the definition of “statutory undertakers” at the end add “and the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994) of any airport to which Article 25 of that Order applies”.

##### The Planning (Northern Ireland) Order 1991 (NI 1)

2. In Article 2(2) in the definition of “statutory undertaker” at the end add “or the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994) of any airport to which Article 25 of that Order applies”.

### SCHEDULE 6

Article 46.

#### APPLICATION OF PART IV TO ASSOCIATED COMPANIES OF AIRPORT OPERATORS

##### Preliminary

1. This Schedule has effect for the purpose of authorising or requiring the imposition by the CAA under Part IV of this Order (as it applies in accordance with this Schedule) of the following conditions in relation to an airport, namely—

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- (a) conditions under Article 31(1) or 32(1) with respect to the accounts of an associated company of the airport operator; and
- (b) conditions under Article 32(2) or 37(2) in respect of a course of conduct pursued by such a company,

and for related purposes; and in this Schedule any such conditions are referred to as “subsidiary conditions”.

### Article 30

2. Article 30(1) and (4) shall apply to any subsidiary conditions for the time being in force in relation to an airport as if—

- (a) references to the airport operator were references to the associated company of the airport operator with respect to whose accounts the conditions were imposed or (as the case may be) that pursued the course of conduct in respect of which the conditions were imposed; and
- (b) references to any such conditions as are mentioned in Article 30(1) were references to any such conditions as are mentioned above.

### Article 31

3.—(1) Where an associated company of the airport operator in the case of any airport either carries on operational activities relating to the airport or is entitled to grant rights by virtue of which any such activities may be carried on by other persons, Article 31(2) shall have effect in relation to the airport with the modifications specified in sub-paragraphs (2) to (4).

(2) After sub-paragraph (a) there shall be inserted the following sub-paragraph—

- “(aa) such conditions as the CAA considers appropriate to secure that the accounts of any associated company of the airport operator, being a company which either carries on operational activities relating to the airport or is entitled to grant rights by virtue of which any such activities may be carried on by other persons, disclose—
  - (i) any subsidy furnished (whether by the making of loans on non-commercial terms or otherwise) by any person or authority to the company in connection with its 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 company out of funds attributable to any other activities carried on by it; and
  - (iii) the aggregate income and expenditure of the company attributable to any such operational activities (whether carried on by the company or by some other person); and” .

(3) After “the airport operator” where it occurs in sub-paragraph (b) there shall be inserted “or the associated company”.

(4) After “the airport operator” where it last occurs there shall be inserted “or in sub-paragraph (aa) to the accounts of any associated company of the airport operator”.

(5) Where—

- (a) sub-paragraph (1) above does not apply to an airport at the time when conditions are imposed in relation to the airport under Article 31(1)(a) or (b); but
- (b) at any later time it appears to the CAA that that sub-paragraph then applies to the airport,

the CAA shall thereupon impose in relation to the airport such conditions as are mentioned in sub-paragraphs (aa) and (b) of Article 31(2) as modified by this paragraph.

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## Article 32

### 4. In Article 32—

- (a) in paragraph (1), the reference to Article 31(2) shall be construed as including, in relation to an airport to which sub-paragraph (1) of paragraph 3 above applies, a reference to Article 31(2) as modified by that paragraph;
- (b) in paragraphs (2), (3)(a) and (b) and (6), references to the airport operator shall be construed as including references to an associated company of the airport operator; and
- (c) in relation to such a company—
  - (i) the reference in paragraph (2) to paragraph (3) shall be construed as a reference to paragraph (3)(a) and (b) (as modified by sub-paragraph (b) above); and
  - (ii) the reference in paragraph (6) to paragraph (3)(a), (b) or (c) shall be construed as a reference to paragraph (3)(a) or (b) (as so modified).

## Article 33

### 5. In Article 33(2) and (3)—

- (a) references to an airport operator shall be construed as including references to an associated company of an airport operator; and
- (b) in relation to such a company, references to any provision of Article 32 shall be construed as references to that provision as modified by paragraph 4 above.

## Article 34

6.—(1) Where an associated company of the airport operator in the case of any airport either carries on operational activities relating to the airport or is entitled to grant rights by virtue of which any such activities may be carried on by other persons, Article 34(2) shall have effect in relation to any reference under Article 34(1) with respect to the airport with the insertion after sub-paragraph (a) of the following sub-paragraph—

- “(aa) whether any associated company of the airport operator has, at any time during the relevant period, pursued—
  - (i) in relation to any operational activities carried on by the company and relating to the airport; or
  - (ii) in relation to the granting of a right by virtue of which any operational activities relating to the airport may be carried on by any other person or persons, a course of conduct which has operated or might be expected to operate against the public interest; and”.

(2) In Article 34(3), as it applies in relation to an associated company of an airport operator in accordance with this Schedule, the reference to the airport operator shall be construed as a reference to the associated company in question.

## Article 35

7.—(1) In relation to any reference to which paragraph 6(1) above applies, Article 35(1)(a) shall have effect with the insertion at the end of head (ii) of “and any course of conduct which, in its opinion, has been pursued by an associated company of the airport operator in relation to any of the matters specified in paragraph (2)(aa) of that Article and has operated, or might be expected to operate, against the public interest.”.

(2) In Article 35(4) the reference to the airport operator concerned shall—

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- (a) in the case of a reference or variation under Article 34 relating only to a course of conduct pursued by an associated company of an airport operator, be construed as a reference to that company; and
- (b) in the case of a reference or variation under that Article relating to courses of conduct pursued by an airport operator and such a company respectively, be construed as a reference to both the airport operator and the company.

#### Article 36

**8.—**(1) In Article 36(3) the reference to an airport operator shall, in the case of a reference under Article 34 relating wholly or in part to a course of conduct pursued by an associated company of an airport operator, be construed as, or as including, a reference to any such company (as the case may require).

(2) In Article 36(6) the reference to the airport operator concerned shall be construed as mentioned in paragraph 7(2) above according to the nature of the reference under Article 34.

#### Article 39

**9.—**(1) In Article 39(1)(a) the reference to the airport operator in relation to an airport shall be construed as including a reference to an associated company of the airport operator.

(2) Article 39(3), (5), (6) and (7) shall have effect in relation to any complaint against an associated company of an airport operator made by virtue of sub-paragraph (1) above as if any reference to an airport operator or to the airport operator concerned were a reference to any such company or to the company against which the complaint is made (as the case may require).

#### Article 40

**10.—**(1) In Article 40(1) and (9) any reference to an airport operator shall be construed as including a reference to an associated company of an airport operator.

(2) Where the permission for the time being in force in respect of an airport is revoked under Article 40(9), (as it applies in accordance with sub-paragraph (1) above) by reason of an associated company's contravention of a compliance order, then (notwithstanding Article 29(4)) a permission shall not again be granted under Part III of this Order in respect of that airport unless it appears to the CAA that, if the CAA were to impose in relation to the airport any condition corresponding to the one whose breach gave rise to the making of the compliance order, that condition would be complied with by the person (whether the airport operator or an associated company of the airport operator) to whose activities any such condition would relate.

(3) In this Article “compliance order” and “contravention” shall be construed in accordance with Article 40(11).

#### Article 41

**11.—**(1) In Article 41 any reference to an airport operator shall be construed as including a reference to an associated company of an airport operator.

- (2) In that Article, as it applies to any such company in accordance with sub-paragraph (1)—
  - (a) in paragraph (1), the reference to Article 31(2)(a) shall be construed as a reference to sub-paragraph (aa) of Article 31(2) (as modified by paragraph 3(2) and (4) above);
  - (b) in paragraph (2), the reference to Article 31(2)(b) shall be construed as a reference to that provision as modified by paragraph 3(3) above; and
  - (c) the references to Article 30(1) and Article 32(1) shall be construed as references to those provisions as modified by paragraph 2 and paragraph 4(a) above.

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## Article 42

**12.**—(1) Article 42(3) shall apply in relation to any subsidiary conditions as if the reference to Article 31(2) were a reference to that provision as modified by paragraph 3 above.

(2) Article 42(5) shall apply in relation to any subsidiary conditions as if—

- (a) references to the airport operator concerned were references to the associated company of the airport operator that pursued the course of conduct in respect of which the conditions were imposed; and
- (b) the reference to Article 32(3)(a), (b) or (c) were a reference to Article 32(3)(a) or (b) (as modified by paragraph 4(b) above).

(3) Article 42(7) shall apply in relation to any subsidiary conditions as if the reference to the airport operator were a reference to the associated company with respect to whose accounts the conditions were imposed or (as the case may be) that pursued the course of conduct in respect of which the conditions were imposed.

## Article 45

**13.** In<sup>F81</sup> Article 45(1A)],<sup>F81</sup> references] to an airport operator shall be construed as including<sup>F81</sup> references] to an associated company of an airport operator engaged in carrying on any operational activities relating to one or more airports.

**F81** 2002 c. 40

## SCHEDULE 7

Article 54(3).

### TRANSFERS UNDER ARTICLE 54

#### Variation of transfers under the scheme

**1.**—(1) If at any time before the end of the period of 12 months from the transfer date the Department considers it appropriate to do so and either—

- (a) the successor company has consented to the order; or
- (b) that company is for the time being wholly owned by the Crown and has been consulted by the Department,

the Department may by order provide that the transfer scheme shall for all purposes be deemed to have been made with such modifications as may be specified in the order.

(2) An order under this paragraph may make, with effect from the date on which the transfer scheme was made, any such provision as could have been made by the scheme.

#### Right to production of documents of title

**2.** Where the transferee under a transfer effected under Article 54 ( “transferee A”) is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected under that Article ( “transferee B”)—

- (a) transferee A shall be deemed to have given to transferee B an acknowledgement in writing of the right of transferee B to production of the document and to delivery of copies thereof; and

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- (b) section 9 of the Conveyancing Act 1881<sup>F82</sup> shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

**F82** 1881 c.41

### Proof of title by certificate

3. A certificate issued by the Department that—
- (a) any asset specified in the certificate;
  - (b) any such interest in or right over any such asset as may be so specified; or
  - (c) any liability so specified,

is by virtue of a transfer under Article 54 for the time being vested in the Department or the successor company shall be conclusive evidence for all purposes of that fact.

### Third parties affected by transfers

- 4.—(1) If in consequence of any transfers effected under Article 54—
- (a) the rights or liabilities of a third party which were enforceable against or by NIAL or the Holding Company become enforceable as to part against or by one transferee and as to part against or by another transferee; and
  - (b) the value of any property or interest of that third party is thereby diminished,

such compensation as may be just shall be paid to that third party by one or both of the transferees.

(2) In sub-paragraph (1) “third party” means a person other than NIAL, the Holding Company or a transferee.

(3) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1), or as to the person to or by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Department.

## SCHEDULE 8

Article 70(1).

### TRANSITIONAL PROVISIONS

#### Provisions relating to Parts II and III

1.—(1) Until the coming into operation of Article 28, references in Articles 3, 7, 10, 25 and 26 to a regulated airport shall be construed as references to an airport to which this paragraph applies.

(2) This paragraph applies to an airport if the annual turnover of the business carried on at the airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before the date when this paragraph comes into operation.

(3) Paragraphs (11) and (12) of Article 28 apply for the purposes of this paragraph as they apply for the purposes of that Article.

2. Where, immediately before the coming into operation of Article 18, byelaws are in operation under section 10 of the Aerodromes Act (Northern Ireland) 1971<sup>F83</sup> in relation to any airport, then—

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- (a) if the airport is managed by a person other than a district council, the airport shall, as from the coming into operation of Article 18, be deemed to have been designated for the purposes of that Article by an order made by the Department; and
- (b) in any case, those byelaws shall as from the coming into operation of Article 18, have effect as if duly made under that Article.

**F83** 1971 c.15 (NI)

### Provisions relating to Part V

**3.—(1)** Any agreement made, transaction effected or other thing done by, to or in relation to NIAL which—

- (a) was made, effected or done for the purposes of or in relation to any assets or liabilities which vest in a transferee under Article 54; and
- (b) is in force or effective immediately before the transfer date,

shall have effect as from that date as if made, effected or done by, to or in relation to that transferee in all respects as if that transferee were the same person in law as NIAL.

(2) Accordingly, references to NIAL—

- (a) in any agreement, deed, bond or instrument;
- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
- (c) in any other document whatsoever (other than a statutory provision),

relating to or affecting assets or liabilities which vest in a transferee under Article 54 shall be taken as from the transfer date as references to that transferee.

(3) Where immediately before the transfer date there is in force an agreement, deed, bond or other instrument which—

- (a) confers or imposes on NIAL any rights or liabilities which vest in a transferee under Article 54; and
- (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of NIAL,

it shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference—

- (i) where the transferee is the Department, to such officer of the Department as the Department may appoint;
- (ii) where the transferee is the successor company, to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of NIAL.

(4) Sub-paragraphs (1) to (3) apply to the Holding Company as they apply to NIAL.

**4.** Where the rights and liabilities of NIAL under any agreement, scheme or arrangement for the payment of pensions, allowances or gratuities to, or in respect of, its employees vest under Article 54 in the successor company, any period of employment with NIAL shall count for the purposes of such agreement, scheme or arrangement (as it has effect by virtue of paragraph 3(1) in relation to employment with the successor company) as a period of employment with the successor company.

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**5.—(1)** It shall be the duty of NIAL and the transferee to take, as and when the transferee considers appropriate, all such steps as may be requisite to secure that the vesting in the transferee under Article 54 of any foreign asset or liability is effective under the relevant foreign law.

(2) Until the vesting in the transferee under Article 54 of any foreign asset or liability is effective under the relevant foreign law, it shall be the duty of NIAL to hold that asset for the benefit of, or to discharge that liability on behalf of, the transferee.

(3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in the transferee under Article 54 of any foreign asset or liability.

(4) It shall be the duty of the transferee to act on behalf of NIAL (so far as possible) in performing the duty imposed on NIAL by this paragraph.

(5) References in this paragraph to any foreign asset or liability are references to any asset or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(6) Any expenses incurred by NIAL under this paragraph shall be met by the transferee.

(7) Sub-paragraphs (1) to (6) apply to the Holding Company as they apply to NIAL.

**6.** Where by virtue of anything done before the transfer date, any statutory provision amended by Schedule 5 has effect in relation to NIAL, that statutory provision shall have effect in relation to the successor company as if that company were the same person, in law, as NIAL.

**7.—(1)** Without prejudice to the powers conferred by Article 71(3), every provision contained in subordinate legislation which is in operation immediately before the transfer date and then applicable to NIAL in relation to assets or liabilities which vest in a transferee under Article 54 shall have effect as if—

- (a) for references to NIAL there were substituted references to the transferee; and
- (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of NIAL there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the transferee.

(2) Sub-paragraph (1) applies to the Holding Company as it applies to NIAL.

**8.—(1)** Where a distribution is proposed to be declared during the accounting reference period of the successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, Articles 278 to 284 of the Companies Order (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

- (a) references in Article 278 to the company's accounts or to accounts relevant under that Article; and
- (b) references in Article 281 to initial accounts,

included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under Article 234 of the Companies Order in respect of the relevant year.

(2) The said assumptions are—

- (a) that the relevant year had been a financial year of the successor company;
- (b) that the vesting effected by Article 54 had been a vesting of such of the assets and liabilities to which NIAL was entitled or subject immediately before the beginning of the relevant year as are determined by the transfer scheme and had been effected immediately after the beginning of that year;



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- (c) that the value of any asset and the amount of any liabilities of NIAL vested in the successor company under Article 54 had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by NIAL in respect of the financial year immediately preceding the relevant year;
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.

(3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by NIAL (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

(4) Accordingly (but without prejudice to the generality of the preceding provisions) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by NIAL had been realised and retained by the successor company.

(5) The said accounts shall not be regarded as statutory accounts for the purposes of Article 61.

(6) In this paragraph “the relevant year” means the last complete financial year ending before the transfer date.

9. Expressions used in paragraphs 4 to 8 and in Part V have the same meaning in those paragraphs as in that Part.

### Supplementary

10. The Department may by order make such other transitional provision in relation to the coming into operation of any provision of this Order as it thinks necessary or expedient.

11. The provisions of this Schedule and any order under paragraph 10 shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954<sup>F84</sup>.

**F84** 1954 c.33 (NI)

### Schedule 9—Amendments

### Schedule 10—Repeals

**Status:**

Point in time view as at 10/11/2011.

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