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STATUTORY INSTRUMENTS

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**1994 No. 426**

**The Airports (Northern Ireland) Order 1994**

**PART IV**

**ECONOMIC REGULATION OF AIRPORTS**

*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
  - (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.

#### **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;
  - (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).