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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**

*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—

- (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.**—(1) Where, in the circumstances mentioned in paragraph (3), the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the 1973 Act or section 10(2) (a) of the 1980 Act, the order may also provide for the revocation or modification of any relevant conditions to such extent as may be requisite to give effect to or to take account of any provision made by the order.

(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).

(3) Paragraph (1) shall have effect where—

- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying on of any operational activities relating to one or more airports;
  - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and at least one of the two or more enterprises which ceased to be distinct enterprises was an airport operator; or
  - (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying on of any operational activities relating to one or more airports.
- (4) Expressions used in this Article which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

#### **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 the Director General of Fair Trading of functions under the 1973 Act or the 1980 Act,

in cases where, apart from the regulations, such functions would be authorised or required to be performed by the CAA and the Director 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 the Director.

#### **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.

(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.

### **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, the Director General of Fair Trading, the Director General of Water Services, the Director General of Electricity Supply, the Director General of Electricity Supply 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>(1)</sup>;
- (b) the 1973 Act;
- (c) the Consumer Credit Act 1974<sup>(2)</sup>;
- (d) the Restrictive Trade Practices Act 1976<sup>(3)</sup>;
- (e) the Resale Prices Act 1976<sup>(4)</sup>;
- (f) the Estate Agents Act 1979<sup>(5)</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>(6)</sup>;
- (j) the Consumer Protection Act 1987<sup>(7)</sup>;

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(1) 1968 c. 29  
(2) 1974 c. 39  
(3) 1976 c. 24  
(4) 1976 c. 53  
(5) 1979 c. 38  
(6) 1986 c. 31  
(7) 1987 c. 43

- (k) the Consumer Protection (Northern Ireland) Order 1987<sup>(8)</sup>;
  - (l) the Control of Misleading Advertisements Regulations 1988<sup>(9)</sup>;
  - (m) the Electricity Act 1989<sup>(10)</sup>;
  - (n) the Water Industry Act 1991<sup>(11)</sup>;
  - (o) the Water Resources Act 1991<sup>(12)</sup>;
  - (p) the Electricity (Northern Ireland) Order 1992<sup>(13)</sup>.
- (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.

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<sup>(8)</sup> 1987 NI 20  
<sup>(9)</sup> SI 1988/915  
<sup>(10)</sup> 1989 c. 29  
<sup>(11)</sup> 1991 c. 56  
<sup>(12)</sup> 1991 c. 57  
<sup>(13)</sup> 1992 NI 1