



# Airports Act 1986

## 1986 CHAPTER 31

### PART IV

#### ECONOMIC REGULATION OF AIRPORTS

##### *Preliminary*

### 36 Interpretation of Part IV, etc.

(1) In this Part—

" the 1973 Act " means the Fair Trading Act 1973 ;

" the 1980 Act " means the Competition Act 1980 ;

" 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, but excluding charges payable by virtue of regulations under section 73 of the 1982 Act (air navigation services etc.)); and

(b) charges levied on aircraft passengers in connection with their arrival at, or departure from, the airport by air;

" the Commission " means the Monopolies and Mergers Commission;

" operational activities " has the same meaning as it has for the time being in section 30(3);

" prescribed " has the meaning given by subsection (3);

" relevant activities ", in relation to an airport, means 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).

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- (2) It is hereby declared that the reference in the definition of " relevant activities " in subsection (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.
- (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.

### *Permissions*

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

- (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 the relevant sum in the case of at least two of the last three financial years ending before the date when this section comes into force, then (subject to section 53(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 subsection (2) applies, but
  - (b) the annual turnover of the business carried on at the airport by the airport operator exceeded the relevant sum in the case of at least two of the last three financial years ending before a date later than the date when this section comes into force,
 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) Nothing in this section applies—
  - (a) to any airport managed by the Secretary of State;
  - (b) to any airport owned or managed by the CAA or by any subsidiary of the CAA ; or
  - (c) to any airport for the time being exempted from economic regulation under this Part by virtue of subsection (5).
- (5) Where at any time the Secretary of State 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 the relevant sum in the case of each of the two last financial years ending before that time, he 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 his determination.

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- (6) Any such determination may be made by the Secretary of State either of his own motion or on the application of the airport operator.
- (7) A determination under subsection (5) shall not—
  - (a) preclude subsection (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 subsection (1)—
  - (a) he shall not be guilty of an offence by reason only of his contravening that subsection ; 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) In this section " the relevant sum " means £1 million or such other sum as is for the time being specified in subsection (1) of section 14, and "annual turnover" and "financial year " have the meaning given by subsection (2) of that section.
- (10) Where at the coming into operation of an order under section 14(3) any airport is, or is due to become, subject to economic regulation under this Part in accordance with subsection (2) or (3) above, that subsection shall continue to apply to the airport notwithstanding any increase in the relevant sum effected by the order.

### **38 Grant or refusal of permissions**

- (1) Where an airport is by virtue of section 37(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 section, 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 subsection, 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 Act 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,

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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 subsection (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 section shall be notified to him in such manner as may be prescribed.
- (7) Any permission granted under this section 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 section 49(9) or the airport ceases to be subject to economic regulation under this Part by virtue of a determination of the Secretary of State under section 37(5) (and shall so remain in force notwithstanding any change of airport operator).

### *Conditions*

## **39 Imposition of conditions by CAA**

- (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 sections of this Part.
- (2) The CAA shall perform its functions under those sections 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 sections;
- 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 this section.
- (4) The duty of an airport operator under subsection (1) to comply with any such conditions as are there mentioned shall be enforceable in accordance with sections 48 to 50 (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 sections of this Part.

#### **40 Mandatory conditions in case of designated airports**

- (1) Where an airport is designated for the purposes of this section by an order made by the Secretary of State, then (subject to subsection (9))—
  - (a) if the airport is so designated at the time when a permission under this Part is granted in respect of it under section 38(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 subsections (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 subsection (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 authority 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 the Companies Act 1985, such conditions as the CAA considers appropriate with respect to the publication of those accounts ;

and the reference in 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 Act or published in pursuance of paragraph (b).

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- (3) The conditions as to airport charges referred to in subsection (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 subsection (9), the CAA shall—
- (a) at the end of the period of five years specified in subsection (3), and
  - (b) at the end of each succeeding period of five years,
- make such modifications in the conditions imposed in pursuance of subsection (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 subsections (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 subsection (3) shall not be modified by the CAA otherwise than in pursuance of subsection (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 subsection (3) are in force in accordance with the preceding provisions of this section, 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 subsection.
- (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 subsection (3), or making any modifications in pursuance of subsection (4), in relation to any airport, the CAA shall, unless the Secretary of State otherwise directs, make a reference to the Commission in respect of the airport under section 43(1).

- (10) The Secretary of State may by order under this section either designate particular airports for the purposes of this section 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.

#### **41 Discretionary conditions**

- (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 section 40(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 subsection (3), then (subject to subsection (6) and section 42) 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 subsection (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 subsection (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—

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- (a) by reason of any subsidy—
    - (i) furnished by any person or authority 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
    - (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 the Companies Act 1985).
- (5) In determining for the purposes of subsection (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 subsection (2) in relation to an airport, the CAA shall notify the airport operator concerned of the course of conduct within subsection (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 section 43(3).
- (7) In this section "designated airport" means an airport for the time being designated for the purposes of section 40.

#### **42 Discretionary conditions: supplementary provisions**

- (1) Nothing in section 41(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 paragraph (a)(i) of section 40(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 paragraph (a)(ii) or (iii) of section 40(5).

- (2) The CAA shall, in determining—
- (a) whether an airport operator is pursuing a course of conduct within section 41(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 section 41(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 subsection 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 section 41(2) appear to be exercisable in relation to an airport on the grounds that the airport operator is pursuing a course of conduct within section 41(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 subsection (2) above.

#### *References to Commission*

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

- (1) Where the CAA is, by virtue of section 40(9), required to make a reference to the Commission under this subsection 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 subsection (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.

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- (3) Where the CAA is, by virtue of section 41(6), authorised to make a reference to the Commission under this subsection 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 section 41(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 subsection (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 section 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 paragraphs (a) to (d) of section 39(2); and
  - (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 section " the relevant period "—
- (a) in relation to any reference in respect of an airport under subsection (1), means—
    - (i) in the case of the first reference in respect of that airport under that subsection, 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 subsection (3), means the period of twelve months ending with the date of the reference.

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

- (1) For the purpose of assisting the Commission in carrying out an investigation on a reference under section 43, the CAA may—
- (a) in the case of a reference under subsection (1) of that section, specify in the reference—
    - (i) any view that the CAA has formed as to what the maximum amounts referred to in paragraph (a) of that subsection 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

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- subsection (2)(a) of that section 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 subsection (3) of that section, 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 section 43, 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 paragraph (a).
- (3) The following provisions of the 1973 Act, namely sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) and Part II of Schedule 3 (performance of functions of the Commission), together with section 24 of the 1980 Act (modification of provisions about performance of Commission's functions), shall apply in relation to references under section 43 of this Act as if—
- (a) the functions of the Commission in relation to such references were functions under the 1973 Act;
- (b) the expression " merger reference " included a reference under this section;
- (c) in section 70 of the 1973 Act, references to the Secretary of State were references to the CAA and the reference to three months were a reference to six months ;
- (d) in paragraph 11 of Schedule 3 to the 1973 Act, the reference to section 71 of that Act were a reference to section 43(4) of this Act; and
- (e) paragraph 16(2) of that Schedule were omitted.
- (4) The CAA shall—
- (a) publish particulars of any reference under section 43, 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

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- (b) send a copy of the reference or variation to the Secretary of State and to the airport operator concerned.

#### **45 Reports on references**

- (1) In making a report on any reference under section 43, 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 section 43(1) so far as relating to the maximum amounts referred to in 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 paragraphs (a) to (c) of section 40(5).
- (3) Where, on any reference under section 43, the Commission conclude that an airport operator is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, have operated, or might be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (4) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 43 above as it applies to reports of the Commission under that Act.
- (5) A report of the Commission on any reference under section 43 shall be sent to the CAA.
- (6) On receiving such a report, the CAA—
  - (a) shall send a copy of the report to the Secretary of State and to the airport operator concerned ; and
  - (b) subject to any direction given by the Secretary of State under subsection (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 Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 21 days beginning with the day on which he receives the copy of the report, direct the CAA to exclude that matter from the report as published under subsection (6).

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

- (1) Where the CAA—
- (a) is required to impose any such conditions as are mentioned in section 40(3), or to make any such modifications as are mentioned in section 40(4), in respect of any such maximum amounts as are there mentioned, and
  - (b) has received a report made by the Commission under section 45 and containing their recommendations as to what those maximum amounts should be,

the CAA shall impose any such conditions in accordance with section 40(3) or make any such modifications in accordance with section 40(4) (as the case may be).

- (2) Where the CAA has received a report of the Commission on a reference under section 43 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 subsection (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 section 43(1), the Secretary of State may, if he thinks fit, direct that, notwithstanding that the report satisfies the requirements of paragraphs (a) to (d) of subsection (2) above, the CAA shall not impose any conditions or make any modifications as mentioned in that subsection.
- (4) Before imposing any conditions or making any modifications as mentioned in subsection (1) the CAA shall have regard to the recommendations referred to in paragraph (b) of that subsection; and before imposing any conditions or making any modifications as mentioned in subsection (2) the CAA shall have regard to the conditions or modifications referred to in paragraph (d) of that subsection.
- (5) Where the CAA has imposed any conditions or made any modifications as mentioned in subsection (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 subsection (1)(b), or (as the case may be) with the conditions or modifications referred to in subsection (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.

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

- (1) The Secretary of State may, in accordance with the following provisions of this section, 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 subsection applies.
- (2) Subsection (1) applies to any reference made to the Commission under section 43 other than a reference under subsection (1) of that section which relates to the first period of five years for which any such conditions as are mentioned in section 40(3) are to be in force in relation to a particular airport.
- (3) Any such regulations as are mentioned in subsection (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 subsection (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 section 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 paragraph (d)) be a proportion of the expenses referred to in 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 section.
- (4) Without prejudice to the generality of subsection (3)(b), any such regulations may provide for an airport operator falling within that provision to be liable to a charge under this section 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 section 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 section shall be paid to the Secretary of State, who shall then pay them into the Consolidated Fund.

#### *Enforcement of conditions*

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

- (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 section 39(1); and
  - (b) that complaint is made—

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- (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 section applies to a condition to which any provision of section 50 applies,

- (2) Where any such complaint is made to the CAA by a person not falling within subsection (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 section 39(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 section 40(6) and subsection (4) below, modify the condition in such manner as it considers appropriate in all the circumstances.
- (4) The CAA shall not under subsection (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 section 43 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 section 39(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 subsection (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 section to the service of a copy of such an order on an airport operator shall be construed accordingly.

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

- (1) If an airport operator is aggrieved by any compliance order applying to him by virtue of section 48 and desires to question the validity of the order on the ground—

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- (a) that the order is not within the powers of that section; 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 section 48, 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 court under this section.

- (2) On any such application the court may, if satisfied—
  - (a) that the compliance order is not within the powers of section 48, 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 subsection (1)(b) above,quash the order or any provision of the order.
- (3) Except as provided by this section, 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 subsection (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 subsection (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 subsection (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 interdict 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 subsection (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 section 38(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 section—

" 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 section 48 (3) (a) or (5);

" contravention ", in relation to a compliance order, includes any failure to comply with it;

" the court "—

(a) in relation to England and Wales, means the High Court; and

(b) in relation to Scotland, means the Court of Session.

## **50 Breach of accounts conditions: criminal penalties etc.**

(1) Any airport operator who fails to comply with any condition imposed in accordance with section 40(2)(a) (in pursuance of either section 40(1) or section 41(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 section 40(2)(b) (in pursuance of either section 40(1) or section 41(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 the fifth level on the standard scale; and
- (b) on a second or subsequent summary conviction, to a fine of one-tenth of the amount corresponding to that level 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 subsection (1) above, then (whether or not proceedings are brought under that subsection 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 paragraphs (a) and (b) of subsection (2).

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

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

(5) Any reference in this section to an airport operator failing to comply with a condition is a reference to his failing to do so in contravention of section 39(1).

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### *Supplementary*

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

- (1) Any condition imposed by the CAA under this Part otherwise than in pursuance of section 40(3) shall (subject to the provisions of this section 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 subsection (1) (c), 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 section 40(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 section 41(1).
- (4) Where any such conditions as are mentioned in section 41(2) are in force in relation to an airport (being conditions imposed otherwise than following a reference to the Commission under section 43(3)) the CAA may at any time modify or revoke those conditions unless—
  - (a) subsection (5)(a) operates to preclude the modification of the conditions under this subsection, or
  - (b) that provision has previously so operated and the conditions were modified following a reference to the Commission made in pursuance of subsection (5) (b).
- (5) Before making any modifications under subsection (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 section 41(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 section 43(3);and, in relation to any such reference, section 43(3) shall have effect as if references to section 41(6) were references to this subsection.
- (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 section 46(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.

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

- (1) Where it appears to the CAA that two or more airports are airports serving the same area in the United Kingdom 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 coordinated by the airport operators concerned,any conditions imposed or modified by the CAA in pursuance of section 40(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) In subsection (1) the reference to airports serving the same area in the United Kingdom shall be construed in accordance with section 31(6); and, for the purposes of that subsection, a body corporate and each of its subsidiaries shall be treated as members of a group of companies.

## **53 Functions in relation to permissions and conditions initially exercisable by Secretary of State**

- (1) If the Secretary of State, at any time during the period of six months beginning with the date of the coming into force of section 37 notifies the CAA that he 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 section 37(2). and
  - (b) specified in the notification,the functions of the CAA specified in subsection (2), those functions shall (subject to subsection (4)) be performed in relation to the airport by the Secretary of State and not by the CAA, and references to the CAA in the provisions mentioned in subsection (2) and in sections 51 and 73 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 Secretary of State.
- (2) The functions of the CAA referred to in subsection (1) are—
  - (a) its functions under section 38 with respect to the grant or refusal of a permission under this Part, and

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- (b) if the airport in question is for the time being designated for the purposes of section 40, its functions under that section and section 52 with respect to the imposition of conditions in accordance with section 4Q(1)(a), and
  - (c) if the airport in question is not so designated, its functions under section 41(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 Secretary of State so determines at the time of granting a permission under this Part in respect of an airport in pursuance of this section, 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 subsection (1), become so subject on such earlier date as may be specified by the Secretary of State in his determination.
- (4) Where functions of the CAA under section 40 or 41(1) fall to be performed by the Secretary of State by virtue of this section, the Secretary of State—
  - (a) shall perform those functions in the manner which he considers is best calculated to achieve the objectives specified in paragraphs (a) to (d) of section 39(2); and
  - (b) shall perform those functions with respect to the imposition of conditions in pursuance of section 40(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 Secretary of State under subsection (1) in the case of an airport, the airport operator has already made an application in accordance with section 38 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 Secretary of State, 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 Secretary of State, and any fee paid by him in pursuance of section 38(2)(b) shall be refunded to him by the CAA.

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

- (1) Where, in the circumstances mentioned in subsection (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 subsection (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 section 40(3) or (4).
- (3) Subsection (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 section which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

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

Schedule 1 shall have effect with respect to the application of the preceding provisions of this Part to associated companies of airport operators.

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

The Secretary of State may by regulations make such provision as he 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.