

CIVIL AVIATION ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1 – Airports

Chapter 1 – Regulation of Operators of Dominant Airports

Enforcement of licence conditions

Section 31: Contravention notice

137. **Section 31** provides that the CAA may issue a contravention notice where it reasonably believes that a person has contravened or is contravening a licence condition. It must specify the contravention, explain any action that the CAA may take and specify a representation period of not less than 30 days (which may be extended), except in cases of a repeated contravention where a shorter period for representations may be given. The contravention notice (and any subsequent extension or withdrawal) must be published and a copy sent to appropriate industry representatives.

Section 32: Restrictions on giving contravention notices

138. **Section 32** provides that the CAA must not give a contravention notice where it has already given a contravention notice or an urgent enforcement order in respect of the same contravention, except in specified circumstances such as where contraventions of the same condition have occurred in different ways or at different times.

Section 33: Enforcement order

139. **Section 33** provides that the CAA may issue an enforcement order to a person if it has determined that the person is contravening a condition set out in a contravention notice. It may also do so if it has determined that the person has contravened a condition set out in a contravention notice and, before the end of the representation period, has failed to take all the appropriate steps specified in the notice. An enforcement order must be published, specifying the condition and contravention, the appropriate steps to be taken and a reasonable period in which to take them, and the CAA's reasons for giving the order.

Section 34: Enforcement order: modification and revocation

140. **Section 34** provides that the CAA may revoke or, with the agreement of the person to whom the order was given, modify an enforcement order provided that a notice in relation to the proposed revocation or modification has been published, a copy sent to the person to whom the order was given, and any representations made in the specified period have been considered. The notice must include reasons for the modification or revocation and specify a reasonable period for making representations. The CAA must publish a notice detailing the revocation or modification of an enforcement order as

soon as practicable after revoking or modifying the order and must send a copy of the notice to appropriate industry representatives.

Section 35: Urgent enforcement order

141. **Section 35** provides that an urgent enforcement order may be given where the CAA has reasonable grounds for believing that a person is contravening, or has contravened or is likely to contravene, a licence condition, that the contravention has resulted in or creates, or is likely to result in or create, an immediate risk of a serious economic or operational problem for users or providers of air transport services, and that an order is appropriate to prevent, remove or reduce that problem or risk or the likelihood of the problem or risk arising. Such an order must give the CAA's reasons for giving the order, specify the condition and contravention, specify the steps to be taken and specify a reasonable period in which to take them. The CAA must publish an urgent enforcement order as soon as practicable after giving it and send a copy to appropriate industry representatives.

Section 36: Urgent enforcement order: confirmation

142. **Section 36** provides that the CAA must confirm or revoke an urgent enforcement order as soon as practicable after giving it. The CAA may only confirm an urgent enforcement order (with or without modifications) where it has determined that the contravention in fact has occurred or is occurring, or is likely to occur; that it has resulted in or creates or is likely to result in or create an immediate risk of a serious economic or operational problem; and that the order is appropriate to prevent, remove or reduce that problem or risk, or the likelihood of the problem or risk arising. Before confirming an urgent enforcement order, the CAA must publish, and send to the person to whom it was given, a notice of the proposal to confirm the order, giving reasons, and allowing for any representations to be made. A notice with details of the confirmation must be published as soon as practicable after the confirmation of the order and a copy sent to the person to whom the order was given and appropriate industry representatives.

Section 37: Urgent enforcement order: modification and revocation

143. **Section 37** provides that the CAA may revoke or, with the agreement of the person to whom the order was given, modify, an urgent enforcement order, provided it has published a notice, sent a copy to the person to whom the order was given and considered any representations made about the proposal in the specified period. The notice must include the CAA's reasons for the proposed modification or revocation. The CAA must publish a notice as soon as practicable after modifying or revoking an urgent enforcement order and send a copy to the person to whom the order was given and to appropriate industry representatives. *Subsection (6)* provides that the power under section 36 to confirm an urgent enforcement order with modifications (without the agreement of the person subject to it) is not restricted by the provisions of this section.

Section 38: Civil proceedings

144. **Section 38** provides that a person who has been given an enforcement order or an urgent enforcement order (whether or not it has been confirmed) must comply with it. The CAA may enforce compliance in civil proceedings for an injunction or any other appropriate remedy or relief. The obligation to comply with an enforcement order or an urgent enforcement order that has been confirmed is a duty owed to every person who may be affected by a contravention of a requirement of the enforcement order or urgent enforcement order. Any person affected by a contravention of a requirement of an enforcement order or urgent enforcement order that has been confirmed may bring civil proceedings against the person to whom such an order was given. It is a defence for the person to whom the order was given to show that all reasonable steps were taken and all due diligence exercised to avoid contravening the order's requirements.

Section 39: Penalty for contravention of licence condition

145. **Section 39** provides that a penalty may be imposed on a person to whom the CAA has given a contravention notice after the CAA has considered any representations made in the specified period and determined that the person is contravening or has contravened a licence condition specified in the notice. Where the contravention notice specifies more than one contravention and/or more than one period of contravention, the CAA may impose a separate penalty for each contravention and/or for each period of the contravention, as appropriate.

Section 40: Penalty for contravention of order

146. **Section 40** provides that the CAA may impose a penalty where it has determined that a person is contravening or has contravened a requirement of an enforcement order or an urgent enforcement order that has been confirmed.

Section 41: Procedure before imposing penalty

147. **Section 41** provides that the CAA must, before imposing a penalty in respect of a contravention notice or contravention of a requirement of an enforcement order or urgent enforcement order that has been confirmed, give the person a notice about the proposed penalty, publish the notice as soon as practicable, send a copy to appropriate industry representatives and consider any representations made about the proposed penalty in the specified period of not less than 21 days. The notice must include the proposed amount of the penalty, which may be varied upon further notice. It must specify the relevant licence condition or requirement and the act or omission that the CAA has determined constitutes a contravention of the condition or requirement. Where the penalty is calculated entirely or partly by reference to a daily amount, the notice must specify the day on which daily amounts would begin to accumulate and the day on, or circumstances in which, they would cease to accumulate.
148. Before varying the proposed amount of the penalty, the CAA must give the person notice, specifying the proposed variation and giving the CAA's reasons for the proposed variation. The notice must be published as soon as practicable and a copy sent to appropriate industry representatives. The CAA must consider any representations made about the proposed variation in the specified period of not less than 21 days. A notice imposing a penalty or varying the proposed amount of the penalty may be withdrawn by the CAA at any time by giving notice to the person. Such a notice must be published as soon as practicable and a copy sent to appropriate industry representatives.

Section 42: Procedure after imposing penalty

149. **Section 42** provides that the CAA must, as soon as practicable after imposing a penalty in respect of a contravention notice or contravention of a requirement of either an enforcement order or an urgent enforcement order that has been confirmed, give notice to the person on whom the penalty is imposed, publish the notice and send a copy to appropriate industry representatives. The notice must state the amount of the penalty imposed, specify the relevant licence condition or requirement and specify the act or omission that the CAA has determined constitutes a contravention of the condition or requirement. It must provide a reasonable period for payment of the penalty. Where the penalty is calculated entirely or partly by reference to a daily amount, it must specify the day on which daily amounts begin to accumulate and the day on which, or circumstances in which, they cease to accumulate.

Section 43: Amount of penalty

150. **Section 43** provides that the amount of a penalty that is imposed on a person for contravention of a licence condition or contravention of an enforcement order or an urgent enforcement order that has been confirmed may consist of either or both of a fixed or daily amount. It must be appropriate and proportionate to the contravention

for which it is imposed. In determining the amount of a penalty, the CAA must have regard in particular to any representations made to it, any steps taken by the person on whom the penalty is to be imposed towards complying with the licence condition or requirement specified in the notice given under section 41(1), and any steps taken by that person towards remedying the consequences of the contravention or requirement.

Section 44: Amount of penalty: fixed amount

151. **Section 44** provides that a penalty of a fixed amount that is imposed on a person for contravention of a licence condition or contravention of an order must not exceed 10% of a person's qualifying turnover for the qualifying period. *Subsections (2) to (6) and (9)* explain what is meant by "qualifying turnover" and "qualifying period". The person's qualifying turnover for the qualifying period is to be taken to be the figure reported in what are known as regulatory accounts, unless regulations made by the Secretary of State (under *subsections (7) and (8)*) provide otherwise.

Section 45: Amount of penalty: daily amounts

152. **Section 45** provides that a penalty of a daily amount imposed on a person for contravention of a licence condition or of a requirement of an order is an amount payable where the contravention continues after the penalty is imposed. The daily amount, which must not exceed 0.1% of the person's qualifying turnover for the qualifying period, is payable in respect of each day in a specified period that the CAA considers appropriate.

Section 46: Use of powers under Competition Act 1998

153. **Section 46** provides that the CAA must consider whether it would be more appropriate to proceed under the Competition Act 1998 before exercising its powers to give a contravention notice or an enforcement order, to give and confirm an urgent enforcement order, and to impose penalties for contravention of a licence condition or contravention of an enforcement order or confirmed urgent enforcement order. The CAA must not proceed to exercise these powers if it considers proceeding under the Competition Act 1998 to be more appropriate.

Section 47: Appeals against orders and penalties and Schedule 3: Appeals against orders and penalties

154. **Section 47** gives effect to Schedule 3 which sets out the decisions against which a person may appeal to the Competition Appeal Tribunal in respect of action to enforce licence conditions, and the circumstances in which the Competition Appeal Tribunal may allow an appeal. Appeals may be made against a decision to give an enforcement order or to confirm an urgent enforcement order, the specified steps to be taken and the period allowed for taking those steps. A decision to modify or revoke such an order may be appealed. Appeals may also be made against a decision to impose a penalty, the period allowed for payment, the amount of the penalty or, in the case of daily amounts, the period during which daily amounts accumulate. An appeal against an enforcement order or urgent enforcement order, or an appeal against a penalty for contravention of a licence condition or order, may be made by the person to whom the order has been given or on whom the penalty has been imposed (as the case may be). Appeals against modification and revocation of enforcement orders may be made by a person who is not the person to whom the order was given and who appears to the Competition Appeal Tribunal to have sufficient interest in the decision. The making of an appeal against an enforcement order, but not an urgent enforcement order, suspends the effect of the order until the appeal is decided or withdrawn, unless the Competition Appeal Tribunal orders otherwise. A further appeal may be made on a point of law arising from a decision of the Competition Appeal Tribunal.