



# Civil Aviation Act 2012

## 2012 CHAPTER 19

### PART 1

#### AIRPORTS

### CHAPTER 1

#### REGULATION OF OPERATORS OF DOMINANT AIRPORTS

##### *Enforcement of licence conditions*

#### **31 Contravention notice**

- (1) The CAA may give a notice under this section (a “contravention notice”) to a person if it has reasonable grounds for believing that the person is contravening, or has contravened, a licence condition.
- (2) A contravention notice must—
  - (a) specify the condition and contravention in respect of which it is given,
  - (b) explain the action that the CAA may take under this Chapter in connection with the contravention, and
  - (c) explain that representations may be made about the matters in the notice before the end of the period specified in the notice.
- (3) The CAA must specify a period of not less than 30 days beginning with the day on which the contravention notice is given, subject to subsection (4).
- (4) The CAA may specify a shorter period in a contravention notice given in respect of a repeated contravention.
- (5) A contravention notice is given to a person in respect of a repeated contravention if, in the period of 2 years ending with the day on which the notice is given, the CAA

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did one or more of the following in respect of a contravention by the person of the same condition—

- (a) gave the person a contravention notice;
  - (b) gave the person an enforcement order;
  - (c) gave the person an urgent enforcement order;
  - (d) imposed a penalty on the person under section 39 or 40.
- (6) The CAA may extend the period specified in a contravention notice given to a person on one or more occasions by giving a notice to that person.
- (7) The CAA may withdraw a contravention notice given to a person at any time by giving a notice to the person that includes its reasons for doing so.
- (8) As soon as practicable after giving a notice under subsection (1), (6) or (7), the CAA must—
- (a) publish the notice, and
  - (b) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (9) A contravention notice given in respect of a contravention that is or was a continuing contravention must specify the period of contravention in respect of which it is given.
- (10) In this Part “representation period”, in connection with a contravention notice, means—
- (a) the period specified in the contravention notice for making representations, or
  - (b) where the period has been extended in accordance with subsection (6), the extended period.

### **32 Restrictions on giving contravention notices**

- (1) If the CAA gives a person a contravention notice or an urgent enforcement order (see section 35) in respect of a contravention, it may not subsequently give the person a contravention notice in respect of the same contravention.
- (2) Subsection (1) does not apply if—
- (a) the CAA withdraws the first contravention notice without imposing a penalty on the person under section 39, or
  - (b) the CAA revokes the urgent enforcement order without imposing a penalty on the person under section 40.
- (3) Subsection (1) does not prevent the CAA giving a person more than one contravention notice, or a contravention notice and an urgent enforcement order, in respect of—
- (a) contraventions of the same condition in different ways, or
  - (b) contraventions of the same condition at different times or during different periods.

### **33 Enforcement order**

- (1) The CAA may give an order under this section (an “enforcement order”) to a person if—
- (a) it has given the person a contravention notice (and has not withdrawn it),
  - (b) the representation period has ended,

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- (c) it has considered any representations made about the matters in the contravention notice before the end of that period (and not withdrawn), and
  - (d) subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if the CAA has determined that the person is contravening a condition specified in the contravention notice in one or more of the ways specified in the notice.
- (3) This subsection is satisfied if the CAA has determined that the person—
  - (a) has contravened a condition specified in the contravention notice in one or more of the ways specified in the notice, and
  - (b) did not, before the end of the representation period, take all of the appropriate steps mentioned in subsection (6)(b).
- (4) An enforcement order must—
  - (a) specify the condition and contravention in respect of which it is given,
  - (b) require the person to take such of the appropriate steps as are specified in the order,
  - (c) specify a reasonable period within which the steps must be taken, and
  - (d) give the CAA’s reasons for giving the order.
- (5) As soon as practicable after giving an enforcement order, the CAA must—
  - (a) publish the order, and
  - (b) send a copy of the order to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) In this section “the appropriate steps”, in relation to a contravention of a condition, means the steps that the CAA has determined are appropriate—
  - (a) for complying with the condition, and
  - (b) for remedying the consequences of the contravention.

### **34 Enforcement order: modification and revocation**

- (1) The CAA may—
  - (a) modify an enforcement order with the agreement of the person to whom it was given, or
  - (b) revoke an enforcement order.
- (2) Before modifying or revoking the order, the CAA must—
  - (a) publish a notice in relation to the proposed modification or revocation,
  - (b) send a copy of the notice to the person to whom the order was given, and
  - (c) consider any representations made about the proposal in the period specified in the notice (and not withdrawn).
- (3) The notice under subsection (2) must—
  - (a) state that the CAA proposes to modify or revoke the order,
  - (b) specify the proposed modification (if relevant),
  - (c) give the CAA’s reasons for the modification or revocation, and
  - (d) specify a reasonable period for making representations.
- (4) As soon as practicable after modifying or revoking an enforcement order, the CAA must—

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- (a) publish a notice giving details of the modification or revocation, and
  - (b) send a copy of the notice to the persons listed in subsection (5).
- (5) Those persons are—
- (a) the person to whom the enforcement order was given, and
  - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

### 35 Urgent enforcement order

- (1) The CAA may give an order under this section (an “urgent enforcement order”) to a person if subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if the CAA has reasonable grounds for believing that—
- (a) the person is contravening, or has contravened, a licence condition,
  - (b) the contravention has resulted in, or creates an immediate risk of, a serious economic or operational problem for users of air transport services, for a class of user of such services or for a relevant service provider, and
  - (c) it is appropriate to give the urgent enforcement order to prevent, remove or reduce that problem or risk.
- (3) This subsection is satisfied if the CAA has reasonable grounds for believing that—
- (a) the person is likely to contravene a licence condition,
  - (b) the contravention is likely to result in, or create an immediate risk of, a problem described in subsection (2)(b), and
  - (c) it is appropriate to give the urgent enforcement order to prevent, or reduce the likelihood of, that problem or risk arising.
- (4) An urgent enforcement order must—
- (a) specify the condition and contravention in respect of which it is given,
  - (b) require the person to take such of the appropriate steps as are specified in the order,
  - (c) specify a reasonable period within which the steps must be taken, and
  - (d) give the CAA’s reasons for giving the order.
- (5) As soon as practicable after giving an urgent enforcement order, the CAA must—
- (a) publish the order, and
  - (b) send a copy of the order to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) In this section “the appropriate steps” means—
- (a) in relation to a contravention of a condition that has occurred or is occurring, the steps that the CAA has determined are appropriate—
    - (i) for complying with the condition, and
    - (ii) for remedying the consequences of the contravention, and
  - (b) in relation to a contravention of a condition that is likely to occur, the steps that the CAA has determined are appropriate for securing that the contravention does not occur.
- (7) In this section “relevant service provider” means a person, other than the person to whom the urgent enforcement order is to be given, who provides services at the airport

at which, or in connection with which, the contravention occurred, is occurring or is likely to occur.

### **36 Urgent enforcement order: confirmation**

- (1) As soon as practicable after giving an urgent enforcement order, the CAA must—
  - (a) confirm the order, or
  - (b) revoke the order (see section 37).
- (2) The CAA may confirm an urgent enforcement order with or without modifications.
- (3) The CAA may confirm an urgent enforcement order given in reliance on section 35(2) only if it has determined that—
  - (a) the person is contravening, or has contravened, a licence condition specified in the order in one or more of the ways specified in the order,
  - (b) the contravention has resulted in, or creates an immediate risk of, a problem described in section 35(2)(b), and
  - (c) it is appropriate to confirm the urgent enforcement order, with any modifications, to prevent, remove or reduce that problem or risk.
- (4) The CAA may confirm an urgent enforcement order given in reliance on section 35(3) only if it has determined—
  - (a) that paragraphs (a) to (c) of subsection (3) of this section are satisfied, or
  - (b) that—
    - (i) the person is likely to contravene a licence condition specified in the order in one or more of the ways specified in the order,
    - (ii) the contravention is likely to result in, or create an immediate risk of, a problem described in section 35(2)(b), and
    - (iii) it is appropriate to confirm the urgent enforcement order, with any modifications, in order to prevent, or reduce the likelihood of, that problem or risk arising.
- (5) Before confirming an urgent enforcement order, the CAA must—
  - (a) publish a notice in relation to the proposal to confirm the order,
  - (b) send a copy of the notice to the person to whom the order was given, and
  - (c) consider any representations made about the proposal in the period specified in the notice (and not withdrawn).
- (6) The notice under subsection (5) must—
  - (a) state that the CAA proposes to confirm the order,
  - (b) specify any proposed modifications of the order,
  - (c) give the CAA's reasons for confirming the order and for any modifications, and
  - (d) specify a reasonable period for making representations.
- (7) As soon as practicable after confirming an urgent enforcement order, the CAA must—
  - (a) publish a notice giving details of the confirmation, including any modifications of the order, and
  - (b) send a copy of the notice to the persons listed in subsection (8).
- (8) Those persons are—
  - (a) the person to whom the urgent enforcement order was given, and

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- (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

### **37 Urgent enforcement order: modification and revocation**

- (1) The CAA may—
  - (a) modify an urgent enforcement order with the agreement of the person to whom it was given, or
  - (b) revoke an urgent enforcement order.
- (2) Before modifying or revoking the order, the CAA must—
  - (a) publish a notice in relation to the proposed modification or revocation,
  - (b) send a copy of the notice to the person to whom the order was given, and
  - (c) consider any representations made about the proposal in the period specified in the notice (and not withdrawn).
- (3) The notice under subsection (2) must—
  - (a) state that the CAA proposes to modify or revoke the order,
  - (b) specify the proposed modification (if relevant),
  - (c) give the CAA's reasons for the modification or revocation, and
  - (d) specify a reasonable period for making representations.
- (4) As soon as practicable after modifying or revoking an urgent enforcement order, the CAA must—
  - (a) publish a notice giving details of the modification or revocation, and
  - (b) send a copy of the notice to the persons listed in subsection (5).
- (5) Those persons are—
  - (a) the person to whom the urgent enforcement order was given, and
  - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) Nothing in this section restricts, or applies in relation to the exercise of, the CAA's power under section 36 to modify an urgent enforcement order when confirming the order.

### **38 Civil proceedings**

- (1) A person who is given an enforcement order must comply with it (unless it is revoked).
- (2) The obligation to comply with an enforcement order is a duty owed to every person who may be affected by a contravention of a requirement of the order.
- (3) A person who is given an urgent enforcement order must comply with it, whether or not it has been confirmed (unless it is revoked).
- (4) The obligation to comply with 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 order.
- (5) Where a duty is owed to a person under subsection (2) or (4), the following are actionable by the person—
  - (a) a breach of the duty that causes the person to sustain loss or damage, and

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- (b) an act that—
  - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
  - (ii) is done entirely or partly for achieving that result.
- (6) In proceedings brought against a person (“P”) by virtue of subsection (5)(a), it is a defence for P to show that P took all reasonable steps and exercised all due diligence to avoid contravening the requirements of the order.
- (7) The CAA may enforce the duties under subsections (1) and (3) in—
  - (a) civil proceedings for an injunction,
  - (b) civil proceedings in Scotland for an interdict or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) civil proceedings for any other appropriate remedy or relief.
- (8) Enforcement of a duty under subsection (1) or (3) by the CAA does not prejudice any rights that a person may have by virtue of subsection (5).

### **39 Penalty for contravention of licence condition**

- (1) The CAA may impose a penalty on a person if—
  - (a) it has given the person a contravention notice (and has not withdrawn it),
  - (b) the representation period has ended,
  - (c) it has considered any representations made about the matters in the contravention notice before the end of that period (and not withdrawn), and
  - (d) it has determined that the person is contravening, or has contravened, a licence condition specified in the notice in one or more of the ways specified in the notice.
- (2) If the contravention notice specifies more than one contravention, the CAA may impose a separate penalty under this section for each contravention.
- (3) If the contravention notice specifies more than one period of contravention, the CAA may impose a separate penalty under this section for each period.

### **40 Penalty for contravention of order**

The CAA may impose a penalty on a person if it has determined that the person is contravening, or has contravened, a requirement of—

- (a) an enforcement order, or
- (b) an urgent enforcement order that has been confirmed.

### **41 Procedure before imposing penalty**

- (1) Before imposing a penalty on a person under section 39 or 40 the CAA must—
  - (a) give the person a notice about the proposed penalty,
  - (b) publish the notice as soon as practicable,
  - (c) send a copy of the notice as soon as practicable to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate, and

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- (d) consider any representations made about the proposed penalty in the period specified in the notice (and not withdrawn).
- (2) A notice under subsection (1) must—
- (a) state that the CAA proposes to impose a penalty,
  - (b) state the proposed amount of the penalty,
  - (c) specify the relevant licence condition or requirement, and
  - (d) specify the act or omission that the CAA has determined constitutes a contravention of the condition or requirement.
- (3) In the case of a penalty calculated entirely or partly by reference to a daily amount (see section 43(2)), a notice under subsection (1) must specify—
- (a) the day on which daily amounts would begin to accumulate, and
  - (b) the day on which, or the circumstances in which, they would cease to accumulate.
- (4) The period specified in a notice under subsection (1) for making representations must be a period of not less than 21 days beginning with the day on which the notice is given to the person.
- (5) Before varying the proposed amount of the penalty, the CAA must—
- (a) give the person on whom the penalty is to be imposed a notice about the proposed variation,
  - (b) publish the notice as soon as practicable,
  - (c) send a copy of the notice as soon as practicable to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate, and
  - (d) consider any representations made about the proposed variation in the period specified in the notice (and not withdrawn).
- (6) In the case of a penalty calculated entirely or partly by reference to a daily amount (see section 43(2)), the reference in subsection (5) to varying the proposed amount of the penalty includes varying—
- (a) the day on which daily amounts would begin to accumulate, and
  - (b) the day on which, or circumstances in which, they would cease to accumulate.
- (7) The notice under subsection (5) must—
- (a) specify the proposed variation, and
  - (b) give the CAA's reasons for the proposed variation.
- (8) The period specified in the notice under subsection (5) for making representations must be a period of not less than 21 days beginning with the day on which the notice is given to the person.
- (9) The CAA may withdraw a notice under subsection (1) or (5) at any time by giving notice to the person on whom it proposed to impose the penalty.
- (10) As soon as practicable after giving a notice under subsection (9), the CAA must—
- (a) publish the notice, and
  - (b) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

## **42 Procedure after imposing penalty**

- (1) As soon as practicable after imposing a penalty under section 39 or 40 the CAA must—
  - (a) give a notice to the person on whom the penalty is imposed,
  - (b) publish the notice, and
  - (c) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (2) The notice must—
  - (a) state that the CAA has imposed the penalty,
  - (b) state the amount of the penalty,
  - (c) specify the relevant licence condition or requirement,
  - (d) specify the act or omission that the CAA has determined constitutes a contravention of the condition or requirement, and
  - (e) specify a reasonable period within which the penalty must be paid or reasonable periods within which different portions of the penalty must be paid.
- (3) In the case of a penalty calculated entirely or partly by reference to a daily amount (see section 43(2)), the notice must specify—
  - (a) the day on which daily amounts begin to accumulate, and
  - (b) the day on which, or the circumstances in which, they cease to accumulate.
- (4) As soon as practicable after daily amounts cease to accumulate, the CAA must—
  - (a) give a notice to the person on whom the penalty was imposed confirming the day on which they ceased to accumulate,
  - (b) publish the notice, and
  - (c) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

## **43 Amount of penalty**

- (1) The amount of a penalty imposed on a person under section 39 or 40 must be such amount as the CAA determines to be—
  - (a) appropriate, and
  - (b) proportionate to the contravention for which it is imposed.
- (2) The penalty may consist of either or both of the following—
  - (a) a fixed amount (see section 44);
  - (b) a daily amount (see section 45).
- (3) In determining the amount of a penalty, the CAA must have regard, in particular, to—
  - (a) any representations made to it in a period specified in a notice proposing the penalty given under section 41(1) or (5) (and not withdrawn),
  - (b) 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 under section 41(1), and
  - (c) any steps taken by that person towards remedying the consequences of the contravention of the condition or requirement.

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#### **44 Amount of penalty: fixed amount**

- (1) A penalty imposed on a person (“P”) under section 39 or 40 for a contravention may not consist of or include a fixed amount exceeding 10% of P’s qualifying turnover for the qualifying period.
- (2) P’s qualifying turnover is—
  - (a) P’s turnover from activities carried on at the airport at which, or in connection with which, the contravention occurred or is occurring (“the qualifying airport”), and
  - (b) the turnover of persons connected to P from such activities.
- (3) The qualifying period is the last regulatory year ending on or before the day on which the notice proposing the penalty is given under section 41(1) (“the notice day”), except in the cases described in subsection (4).
- (4) Those cases are—
  - (a) where P was not the operator of an area at the qualifying airport throughout the last regulatory year that ends on or before the notice day;
  - (b) where there is no regulatory year or the last regulatory year ended more than 12 months before the notice day;
  - (c) where P has not provided the CAA with accounts prepared in accordance with the licence for the last regulatory year that ends on or before the notice day.
- (5) In those cases—
  - (a) if P was the operator of an area at the qualifying airport on the notice day, the qualifying period is the year ending with the notice day (or, if shorter, the period ending with the notice day during which P was the operator of such an area), and
  - (b) if P was not the operator of such an area on the notice day, the qualifying period is the year ending with the last day before the notice day on which P was the operator of such an area (or, if shorter, the period ending with that day during which P was the operator of such an area).
- (6) P’s qualifying turnover for a qualifying period is to be taken to be the qualifying turnover for that period as reported in accounts which P is required to prepare by a licence condition, unless regulations under subsection (7) provide otherwise.
- (7) The Secretary of State may by regulations—
  - (a) amend or otherwise modify the definition of qualifying turnover, and
  - (b) make provision about how a person’s qualifying turnover for a qualifying period is to be calculated.
- (8) The regulations may, in particular—
  - (a) make provision about cases in which turnover is or is not to be treated as qualifying turnover for a qualifying period,
  - (b) provide that a person’s qualifying turnover for a qualifying period is to be taken to be the qualifying turnover reported in accounts specified or described in the regulations, and
  - (c) provide that a person’s qualifying turnover is to be calculated entirely or partly using accounting rules specified or described in the regulations.
- (9) In this section “regulatory year” means a year for which P was required to prepare accounts by a licence condition in respect of an area at the qualifying airport.

#### **45 Amount of penalty: daily amounts**

- (1) In relation to a penalty under section 39 or 40, a daily amount is an amount payable where the contravention in respect of which the penalty is imposed continues after it is imposed.
- (2) A penalty under section 39 may not consist of or include a daily amount unless that contravention has been continuous since the end of the representation period for the contravention notice in which the contravention was specified.
- (3) A daily amount must not exceed 0.1% of the person’s qualifying turnover for the qualifying period.
- (4) A daily amount is payable in respect of each day in a period specified by the CAA in the notice under section 42 stating that it has imposed the penalty.
- (5) A specified period during which daily amounts accumulate must be such period as the CAA considers appropriate, subject to subsections (6) and (7).
- (6) The period must begin after the day on which the CAA gives the notice under section 42.
- (7) The period must end before—
  - (a) the day on which the contravention specified in the notice under section 42 ceases, or
  - (b) if more than one contravention is specified in that notice, the day on which the last of those contraventions ceases.
- (8) In this section “qualifying turnover” and “qualifying period” have the same meaning as in section 44.

#### **46 Use of powers under Competition Act 1998**

- (1) Before exercising a power listed in subsection (3), the CAA must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2) The CAA must not exercise such a power to the extent that it considers that it would be more appropriate to proceed under the Competition Act 1998.
- (3) Those powers are—
  - (a) the power to give a contravention notice under section 31;
  - (b) the power to give an enforcement order under section 33;
  - (c) the powers to give and confirm an urgent enforcement order under sections 35 and 36;
  - (d) the powers to impose penalties under sections 39 and 40.

#### **47 Appeals against orders and penalties**

Schedule 3 (appeals against orders and penalties) has effect.