



# Civil Aviation Act 2012

## 2012 CHAPTER 19

### PART 1

#### AIRPORTS

### CHAPTER 1

#### REGULATION OF OPERATORS OF DOMINANT AIRPORTS

#### *General duties*

#### **1 CAA's general duty**

- (1) The CAA must carry out its functions under this Chapter in a manner which it considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.
- (2) The CAA must do so, where appropriate, by carrying out the functions in a manner which it considers will promote competition in the provision of airport operation services.
- (3) In performing its duties under subsections (1) and (2) the CAA must have regard to—
  - (a) the need to secure that each holder of a licence under this Chapter is able to finance its provision of airport operation services in the area for which the licence is granted,
  - (b) the need to secure that all reasonable demands for airport operation services are met,
  - (c) the need to promote economy and efficiency on the part of each holder of a licence under this Chapter in its provision of airport operation services at the airport to which the licence relates,
  - (d) the need to secure that each holder of a licence under this Chapter is able to take reasonable measures to reduce, control or mitigate the adverse environmental effects of the airport to which the licence relates, facilities used

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- or intended to be used in connection with that airport (“associated facilities”) and aircraft using that airport,
  - (e) any guidance issued to the CAA by the Secretary of State for the purposes of this Chapter,
  - (f) any international obligation of the United Kingdom notified to the CAA by the Secretary of State for the purposes of this Chapter, and
  - (g) the principles in subsection (4).
- (4) Those principles are that—
  - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and
  - (b) regulatory activities should be targeted only at cases in which action is needed.
- (5) If, in a particular case, the CAA considers that there is a conflict—
  - (a) between the interests of different classes of user of air transport services, or
  - (b) between the interests of users of air transport services in different matters mentioned in subsection (1),
 its duty under subsection (1) is to carry out the functions in a manner which it considers will further such of those interests as it thinks best.
- (6) For the purposes of subsection (3)(d) the environmental effects of the airport, associated facilities and aircraft include—
  - (a) substances, energy, noise, vibration or waste, including emissions, discharges and other releases into the environment,
  - (b) visual or other disturbance to the public,
  - (c) effects from works carried out at the airport or the associated facilities or to extend the airport or the associated facilities, and
  - (d) effects from services provided at the airport or the associated facilities.
- (7) Section 4 of the Civil Aviation Act 1982 (CAA’s general objectives) does not apply in relation to the carrying out by the CAA of its functions under this Chapter.

## **2 Secretary of State’s general duty**

- (1) The Secretary of State must carry out the functions listed in subsection (3) in a manner which the Secretary of State considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.
- (2) The Secretary of State must do so, where appropriate, by carrying out the functions in a manner which the Secretary of State considers will promote competition in the provision of airport operation services.
- (3) Those functions are—
  - (a) the Secretary of State’s functions under this Chapter, and
  - (b) the Secretary of State’s functions under Chapter 3, other than the functions under sections 66(3) and 68(6).
- (4) In performing the duties under subsections (1) and (2) the Secretary of State must have regard to—

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- (a) the need to secure that each holder of a licence under this Chapter is able to finance its provision of airport operation services in the area for which the licence is granted,
  - (b) the need to secure that all reasonable demands for airport operation services are met,
  - (c) the need to promote economy and efficiency on the part of each holder of a licence under this Chapter in its provision of airport operation services at the airport to which the licence relates,
  - (d) the need to secure that each holder of a licence under this Chapter is able to take reasonable measures to reduce, control or mitigate the adverse environmental effects of the airport to which the licence relates, facilities used or intended to be used in connection with that airport (“associated facilities”) and aircraft using that airport, and
  - (e) the principles in subsection (5).
- (5) Those principles are that—
- (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and
  - (b) regulatory activities should be targeted only at cases in which action is needed.
- (6) If, in a particular case, the Secretary of State considers that there is a conflict—
- (a) between the interests of different classes of user of air transport services, or
  - (b) between the interests of users of air transport services in different matters mentioned in subsection (1),
- the duty under subsection (1) is to carry out the functions in a manner which the Secretary of State considers will further such of those interests as the Secretary of State thinks best.
- (7) For the purposes of subsection (4)(d) the environmental effects of the airport, associated facilities and aircraft include the effects mentioned in section 1(6).

### *Prohibition*

## **3 Prohibition**

- (1) Subsection (2) applies where for a period—
- (a) a person (“P”) is the operator of an airport area (“area A”) that is a dominant area or part of a dominant area,
  - (b) area A is located at a dominant airport, and
  - (c) P does not have a licence in respect of area A.
- (2) The persons mentioned in subsection (3) may not require a person to pay a relevant charge in respect of airport operation services that are provided during that period in—
- (a) area A, or
  - (b) any other area that forms part of the same airport and in respect of which P is the operator and does not have a licence.
- (3) Those persons are—
- (a) P,
  - (b) a person who is connected to P,

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- (c) a person to whom P or a person connected to P has assigned the right to require payment of the charge, and
  - (d) a person acting on behalf of a person within paragraph (a), (b) or (c).
- (4) If a person requires payment of charges in contravention of subsection (2)—
- (a) the charge is not recoverable by the person, and
  - (b) if paid, the charge is recoverable from the person.
- (5) A charge is not irrecoverable under subsection (4)(a) or recoverable under subsection (4)(b) by reason of—
- (a) the invalidity of a market power determination (and the consequent continuation in effect of a previous market power determination), or
  - (b) the invalidity of an operator determination,
- if it is a charge in respect of services provided before invalidity is finally determined in legal proceedings.
- (6) Subsection (5) applies—
- (a) whether or not the charge is required to be paid before the final determination of invalidity, and
  - (b) whether or not the charge is paid before that determination.
- (7) The CAA may enforce subsection (2) in civil proceedings for an injunction or, in Scotland, an interdict.
- (8) In this section “relevant charge” means any charge other than—
- (a) a penalty payable by virtue of section 38C of the Civil Aviation Act 1982 (breaches of noise control schemes),
  - (b) a penalty payable by virtue of section 78A of the Civil Aviation Act 1982 (penalty schemes established by managers of aerodromes), or
  - (c) a charge payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services).

#### **4 Prohibition: exemption**

- (1) This section applies if a person who is the operator of an airport area (“area A”) on a day on which area A becomes a dominant area located at a dominant airport, or part of such an area, does not have a licence in respect of area A on that day.
- (2) For the purposes of section 3, the person is to be treated as having a licence in respect of area A during the preliminary period.
- (3) The preliminary period begins for area A on the day mentioned in subsection (1).
- (4) The preliminary period ends for area A when one of the following occurs—
- (a) a licence is granted to the person in respect of area A or an area that includes all of area A;
  - (b) the CAA publishes a notice of its decision to refuse to grant a licence to the person in respect of area A;
  - (c) the person ceases to be the operator of area A;
  - (d) area A ceases to be a dominant area or part of a dominant area;
  - (e) the airport at which area A is located ceases to be a dominant airport.

- (5) If subsection (4)(a), (b), (c) or (d) is satisfied in relation to a part of area A, the preliminary period ends for that part of the area.

### *Dominant airports*

## **5 Dominant areas and dominant airports**

- (1) For the purposes of this Part, an airport area is dominant if the CAA has—
- (a) made a determination that the market power test is met in relation to the area (see section 6), and
  - (b) published a notice of the determination.
- (2) For the purposes of this Part, an airport is dominant if all or part of its core area is a dominant area or part of a dominant area.
- (3) In this Part—
- “airport area” means an area that consists of or forms part of an airport;
  - “area” includes an area of land, a building or other structure and a part of a building or other structure.
- (4) In this Part “core area”, in relation to an airport, means—
- (a) the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport,
  - (b) the passenger terminals, and
  - (c) the cargo processing areas,
- (subject to regulations under section 66).
- (5) In subsection (1) the reference to a determination does not include a determination that has ceased to have effect (see section 7(9) and (10)).

## **6 Market power test**

- (1) The market power test is met in relation to an airport area if tests A to C are met by or in relation to the relevant operator.
- (2) For the purposes of tests A to C “the relevant operator” means the person who is the operator of the airport area at the time the test is applied.
- (3) Test A is that the relevant operator has, or is likely to acquire, substantial market power in a market, either alone or taken with such other persons as the CAA considers appropriate (but see subsections (6) and (7)).
- (4) Test B is that competition law does not provide sufficient protection against the risk that the relevant operator may engage in conduct that amounts to an abuse of that substantial market power.
- (5) Test C is that, for users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.
- (6) Test A is met only if—
- (a) the market is a market for one or more of the types of airport operation service provided in the airport area (or for services that include one or more of those types of service), and

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- (b) geographically the market consists of or includes all or part of the airport area.
- (7) In relation to an airport area that includes all or part of the core area of an airport (as well as all or part of the rest of the airport), subsection (6) has effect as if the references to the airport area were references to the core area or, as appropriate, the part of the core area.
- (8) For the purposes of test B conduct may, in particular, amount to an abuse of substantial market power if it is conduct described in section 18(2)(a) to (d) of the Competition Act 1998.
- (9) In test B “competition law” means—
  - (a) Articles 101 and 102 of the TFEU,
  - (b) Part 1 of the Competition Act 1998, and
  - (c) Part 4 of the Enterprise Act 2002 (market investigations).
- (10) In applying tests A to C, the CAA must have regard to—
  - (a) relevant notices and guidance published by the European Commission about the application and enforcement of the prohibitions in Articles 101 and 102 of the TFEU;
  - (b) relevant advice and information published under section 52 of the Competition Act 1998 (advice and information about the application and enforcement of the prohibitions in Part 1 of that Act and Articles 101 and 102 of the TFEU);
  - (c) relevant advice and information published under section 171 of the Enterprise Act 2002 (advice and information about the operation of Part 4 of that Act).
- (11) In this section “the TFEU” means the Treaty on the Functioning of the European Union.

## 7 **Market power determinations**

- (1) The CAA may make a determination that the market power test is or is not met in relation to an airport area (a “market power determination”) whenever it considers it appropriate to do so.
- (2) The CAA must make a market power determination in respect of an airport area if—
  - (a) it is asked to do so by a person listed in subsection (3),
  - (b) the area is located at an airport that is a large airport at the time the request is made, and
  - (c) the area consists of or includes all or part of the core area of the airport.
- (3) Those persons are—
  - (a) the operator of the airport area, and
  - (b) any other person whose interests are likely to be materially affected by the determination.
- (4) For the purposes of subsection (2)(b), an airport is a large airport during a calendar year if, in the previous calendar year, the number of passenger movements at the airport exceeded 5 million.
- (5) Subsection (2) does not apply if—

- (a) the CAA has previously made a market power determination in respect of the airport area (or an area that includes all of the airport area), and
  - (b) it considers that there has not been a material change of circumstances since that determination.
- (6) The CAA may treat a request under subsection (2) in respect of an airport area (“area A”) as if it were—
- (a) a number of requests in respect of a number of airport areas that consist of or include different parts of area A, or
  - (b) a request in respect of an area that includes all of area A.
- (7) When choosing an airport area that is to be the subject of a market power determination, the CAA must have regard to the market or markets that are relevant for the purposes of test A (see section 6(3)).
- (8) The CAA may, in particular—
- (a) make separate market power determinations in respect of different areas which are located at the same airport and have the same relevant operator (within the meaning of section 6(2));
  - (b) make a market power determination in respect of an airport area that consists of two or more areas that are not adjacent if the areas are located at the same airport.
- (9) A market power determination in respect of an airport area ceases to have effect if the CAA publishes a notice of a further market power determination in respect of the airport area or in respect of an area that includes all of the airport area.
- (10) Where the CAA—
- (a) publishes a notice of a market power determination in respect of an airport area (“determination A”), and
  - (b) subsequently publishes a notice of a market power determination in respect of part of the airport area or in respect of an area that includes part of the airport area,
- determination A ceases to have effect in relation to that part (but continues to have effect in relation to the rest of the airport area).
- (11) In this section “passenger movements” has the same meaning as in Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges.

## **8 Publication of market power determinations**

- (1) As soon as practicable after making a market power determination the CAA must—
- (a) publish a notice of the determination, and
  - (b) send a copy of the notice to each person listed in subsection (2).
- (2) Those persons are—
- (a) the operator of the airport area that is the subject of the determination,
  - (b) if the CAA was required by section 7(2) to make the determination, any other person who requested the determination, and
  - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

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- (3) If the notice does not include the CAA’s reasons for the determination, the CAA must as soon as practicable after publishing the notice—
  - (a) publish its reasons, and
  - (b) send a copy of them to each person listed in subsection (2).

## **9 Operators of areas**

- (1) For the purposes of this Part, a person is the operator of an airport area if the person has overall responsibility for the management of all of the area.
- (2) The Secretary of State may by regulations make provision about when a person is or is not to be treated for the purposes of this Part as having overall responsibility for the management of an airport area.
- (3) The regulations may, in particular, make provision for determining which person has overall responsibility for the management of an airport area where more than one person controls or may control the matters listed in subsection (4) to some extent.
- (4) Those matters are—
  - (a) the types of services that are or may be provided in the area,
  - (b) the prices that are or may be charged for services provided in the area,
  - (c) the quality of services provided in the area,
  - (d) access to the area, and
  - (e) the development of the area.
- (5) The regulations have effect subject to operator determinations by the CAA under section 10.

## **10 Operator determinations**

- (1) The CAA may determine whether, in a particular case, a person has overall responsibility for the management of an airport area.
- (2) A determination under subsection (1) is an “operator determination” for the purposes of this Part if the CAA states in the determination that it is made for the purposes of this section.
- (3) If the CAA publishes a notice of an operator determination in respect of a person, the person is to be treated for the purposes of this Part as having or not having overall responsibility for the management of the airport area in accordance with the determination until the CAA publishes a notice withdrawing it.
- (4) When making an operator determination in respect of a person, the CAA must have regard, in particular, to—
  - (a) regulations under section 9, and
  - (b) the extent to which the person controls or may control the matters listed in section 9(4).
- (5) The CAA must make an operator determination in respect of a person and an area that consists of or forms part of a dominant airport if it is asked to do so by the person.
- (6) Subsection (5) does not apply if—



- (a) the CAA has previously made an operator determination to the effect that the person requesting the determination does or does not have overall responsibility for the management of the airport area,
  - (b) it has not published a notice withdrawing that determination, and
  - (c) it considers that there has not been a material change of circumstances since that determination.
- (7) Subsection (5) does not apply if the CAA considers that it is possible to ascertain whether the person has overall responsibility for the management of the area from—
- (a) information that is in the public domain, and
  - (b) information that is in the person’s custody or under the person’s control.
- (8) The CAA may treat a request under subsection (5) in respect of an airport area (“area A”) as if it were—
- (a) a number of requests in respect of a number of airport areas that consist of or include different parts of area A, or
  - (b) a request in respect of an area that includes all of area A.

## 11 Publication of operator determinations

- (1) As soon as practicable after making an operator determination the CAA must—
- (a) publish a notice of the determination, and
  - (b) send a copy of the notice to each person listed in subsection (2).
- (2) Those persons are—
- (a) the person in respect of whom the determination was made, and
  - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) The notice of the determination must include the statement under section 10(2).
- (4) As soon as practicable after withdrawing an operator determination the CAA must—
- (a) publish a notice of the withdrawal, and
  - (b) send a copy of the notice to each person listed in subsection (2).
- (5) If a notice under subsection (1) or (4) does not include the CAA’s reasons for the determination or withdrawal, the CAA must as soon as practicable after publishing the notice—
- (a) publish its reasons, and
  - (b) send a copy of them to each person listed in subsection (2).

## 12 Advance determinations

- (1) The CAA may make a market power determination or an operator determination based entirely or partly on circumstances that have not arisen at the time the determination is made.
- (2) The CAA must specify the circumstances in the determination.
- (3) The CAA may make a determination in reliance on subsection (1) only if it considers that the specified circumstances are likely to arise.

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- (4) Sections 8 and 11 do not require the CAA to publish or send a copy of a notice of a determination made in reliance on subsection (1), or reasons for such a determination, at a time when—
  - (a) the circumstances specified in the determination have not arisen, and
  - (b) it considers that doing so would involve disclosing commercially sensitive information.
- (5) If a notice of a market power determination made in reliance on subsection (1) is published before the circumstances specified in the determination arise—
  - (a) an airport area or airport is not dominant by virtue of the determination until those circumstances arise, and
  - (b) a previous market power determination which would otherwise cease to have effect by virtue of section 7(9) or (10) continues to have effect until those circumstances arise.
- (6) If a notice of an operator determination made in reliance on subsection (1) is published before the circumstances specified in the determination arise, a person is not to be treated as having or not having overall responsibility for the management of an airport area by virtue of the determination until those circumstances arise.

### 13 Appeals against determinations

Schedule 1 (appeals against determinations) has effect.

#### *Licences*

### 14 Application for licence

- (1) An application for a licence—
  - (a) must be made in the specified form and manner,
  - (b) must contain or be accompanied by the specified information, and
  - (c) must be published by the applicant in the specified form and manner and within a period notified to the applicant by the CAA.
- (2) On an application made and published in accordance with subsection (1), the CAA must—
  - (a) grant the licence (see section 15), or
  - (b) refuse to grant the licence (see section 16),
 unless the application is withdrawn.
- (3) Subsection (4) applies if a person who is the operator of an airport area (“area A”) on a day on which area A becomes a dominant area located at a dominant airport, or part of such an area, does not have a licence in respect of area A on that day.
- (4) The person is to be treated as having made and published an application for such a licence in accordance with subsection (1).
- (5) In subsection (1) “specified” means specified by the CAA.
- (6) The CAA must publish a copy of the matters specified for the purposes of subsection (1).

## 15 Granting licence

- (1) Before granting a licence the CAA must—
  - (a) publish a notice in relation to the proposed licence,
  - (b) send a copy of the notice to the persons listed in subsection (2), and
  - (c) consider any representations about the proposal to grant the licence, including the proposed conditions, that are made in the period specified in the notice (and not withdrawn).
- (2) Those persons are—
  - (a) the applicant for the licence, and
  - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) A notice under subsection (1) must—
  - (a) state that the CAA proposes to grant the licence to the applicant,
  - (b) specify the airport area for which it is to be granted,
  - (c) specify the airport at which the area is located,
  - (d) specify the conditions proposed to be included in the licence,
  - (e) give the CAA's reasons for the proposed conditions, and
  - (f) specify a reasonable period for making representations.
- (4) The CAA may withdraw a notice under subsection (1) at any time.
- (5) If, after complying with subsections (1) to (3), the CAA decides to grant the licence, it must—
  - (a) publish a copy of the licence and a notice in relation to the licence, and
  - (b) send a copy of the licence and the notice to the persons listed in subsection (2).
- (6) The CAA is not to be treated as having complied with subsections (1) to (3) in relation to a licence granted to an applicant for an area if the conditions included in the licence when it is granted differ significantly from the conditions proposed in the notice under subsection (1) relating to the applicant and the area (or, if more than one, the latest such notice).
- (7) A notice under subsection (5) must—
  - (a) specify the date from which the licence comes into force (subject to subsection (9)),
  - (b) give the CAA's reasons for the conditions included in the licence,
  - (c) state how it has taken account of any representations made in the period specified in the notice under subsection (1), and
  - (d) state the reason for any differences between the conditions included in the licence and those proposed in the notice under subsection (1).
- (8) The date specified under subsection (7)(a) must be a date falling after the end of the period of 6 weeks beginning with the day on which the notice under subsection (5) was published.
- (9) If the CAA grants a licence to a person in respect of an airport area at a time when the person is not the operator of any part of the area, the licence does not come into force until the person becomes the operator of all or part of the area.

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## 16 Refusing to grant licence

- (1) The CAA may refuse to grant a licence for an airport area if—
  - (a) the CAA considers that the applicant is not the operator of the area and is not likely to become the operator of the area,
  - (b) the area is not a dominant area (or part of a dominant area) and the CAA considers that it is not likely to become a dominant area (or part of a dominant area),
  - (c) the airport at which the area is located is not a dominant airport and the CAA considers that it is not likely to become a dominant airport,
  - (d) the applicant is a person falling within subsection (2), or
  - (e) the applicant is connected to a person falling within subsection (2).
- (2) A person falls within this subsection if—
  - (a) the person has previously held a licence in respect of the airport area that is the subject of the application or an area that included all or part of that airport area, and
  - (b) the licence was revoked in accordance with a relevant provision of the licence.
- (3) For the purposes of subsection (2)(b) a provision is a relevant provision of the licence if it states that revocation of the licence entirely or partly in reliance on that provision is relevant for the purposes of this section.
- (4) Before refusing to grant a licence, the CAA must—
  - (a) publish a notice in relation to the proposed refusal,
  - (b) send a copy of the notice to the persons listed in subsection (5), and
  - (c) consider any representations about the proposed refusal that are made in the period specified in the notice (and not withdrawn).
- (5) Those persons are—
  - (a) the applicant for the licence, and
  - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) A notice under subsection (4) must—
  - (a) state that the CAA proposes to refuse to grant the licence,
  - (b) specify the airport area in respect of which the application was made,
  - (c) specify the airport at which the area is located, and
  - (d) give the CAA's reasons for the proposed refusal.
- (7) The period specified in the notice must be a period of not less than 30 days beginning with the day on which the notice is published.
- (8) The CAA may withdraw a notice under subsection (4) at any time.
- (9) If, after complying with subsections (4) to (7), the CAA decides to refuse to grant the licence, it must—
  - (a) publish a notice of its decision, and
  - (b) send a copy of the notice to the persons listed in subsection (5).
- (10) A notice under subsection (9) must—
  - (a) specify the airport area in respect of which the application was made,
  - (b) specify the airport at which the area is located, and

- (c) give the CAA's reasons for the refusal.

## **17 Content and effect of licence**

- (1) A licence must include provision specifying—
  - (a) the airport area for which it is granted, and
  - (b) the airport at which the area is located.
- (2) The specified area may consist of two or more separate areas if they form part of the same airport.
- (3) References in this Part to licence conditions do not include provision mentioned in subsection (1).
- (4) A licence must—
  - (a) include provision about the circumstances in which it may be revoked by the CAA, and
  - (b) provide that it may be revoked only in accordance with section 48.
- (5) References in this Part to licence conditions include provision mentioned in subsection (4), except in section 21(6).
- (6) A licence continues in force until it is revoked in accordance with its provisions.
- (7) A licence is not valid unless it is in writing.
- (8) A licence is not transferable.

### *Licence conditions*

## **18 Licence conditions**

- (1) A licence may include—
  - (a) such conditions as the CAA considers necessary or expedient having regard to the risk that the holder of the licence may engage in conduct that amounts to an abuse of substantial market power in a market for airport operation services (or for services that include airport operation services), and
  - (b) such other conditions as the CAA considers necessary or expedient having regard to the CAA's duties under section 1.
- (2) For the purposes of this section conduct may, in particular, amount to an abuse of substantial market power if it is conduct described in section 18(2)(a) to (d) of the Competition Act 1998.

## **19 Price control conditions**

- (1) For the purposes of this Part a licence condition is a price control condition to the extent that it regulates prices by—
  - (a) providing that the amount, or the maximum amount, that may be charged is an amount specified in, or determined in accordance with, the condition, or
  - (b) requiring the amount, or maximum amount, that may be charged to be approved by the CAA.

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- (2) A licence must include such price control conditions as the CAA considers necessary or expedient having regard to the risk referred to in section 18(1)(a).
- (3) The duty in subsection (2) has effect subject to—
  - (a) the provision in this Chapter about the conditions that may be included in the licence,
  - (b) the provision in this Chapter about granting licences, and
  - (c) the provision in this Chapter and in the licence about modifying licence conditions.
- (4) Subsection (5) applies where the CAA considers that the holder (“H”) of a licence for an airport area engaged in conduct amounting to an abuse of substantial market power by directly or indirectly imposing unfairly high charges in respect of activities carried on in the airport area during—
  - (a) a period during which H was treated as having a licence in respect of the area by virtue of section 4;
  - (b) a period during which H would have been so treated but for the suspension of a market power determination or operator determination under Schedule 1.
- (5) The licence may include such price control conditions as the CAA considers appropriate for the purpose of depriving the holder of the licence of an amount not exceeding the amount which the CAA considers was earned from the abuse during that period.
- (6) A price control condition may make provision—
  - (a) by reference to the amount charged for particular goods or services;
  - (b) by reference to the overall amount charged for a range of goods or services.
- (7) A licence that includes a price control condition must include conditions specifying a period or periods for which the price control condition has effect.

## **20 Conditions relating to CAA charges**

- (1) A licence may include conditions requiring the payment to the CAA of charges determined under a scheme or regulations made under section 11 of the Civil Aviation Act 1982 in respect of the carrying out of the CAA’s functions under this Chapter.
- (2) Such conditions may require the payment of charges on the grant of the licence or while it continues in force (or both).
- (3) The inclusion of such conditions does not prevent the CAA recovering charges mentioned in subsection (1) as a debt due to it.

## **21 Content and effect of licence conditions**

- (1) Licence conditions may, in particular, include—
  - (a) provision for a condition to have effect or to cease to have effect at times or in circumstances specified in, or determined in accordance with, a condition,
  - (b) provision requiring the holder of the licence to enter into a contract or other arrangement for a purpose specified in a condition and on terms specified in, or determined in accordance with, a condition,

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- (c) provision requiring the holder of the licence to comply with requirements imposed (by directions or otherwise) by a specified person,
  - (d) provision requiring the holder of the licence to do or not to do things specified, or of a description specified, in the licence unless a specified person consents to its not doing or doing those things,
  - (e) provision requiring the holder of the licence to refer a matter to a specified person for approval or determination, and
  - (f) provision relating to activities carried on outside the airport area for which the licence is granted.
- (2) In subsection (1) the references to a specified person are to—
- (a) a person specified, or of a description specified, in a condition for the purpose concerned, and
  - (b) a person nominated for the purpose concerned by a person within paragraph (a).
- (3) A licence condition may include provision for its modification only if it specifies or describes—
- (a) the circumstances in which it may be modified,
  - (b) the types of modification that may be made, and
  - (c) the period or periods in which it may be modified.
- (4) If a licence condition includes such provision, it may be modified in accordance with that provision or in accordance with the provision made by this Chapter about modifying licence conditions.
- (5) Where a licence condition is subject to an exception (however expressed) relating to, or operating by reference to, financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before section 3 came into force, the licence may not—
- (a) provide for the exception to cease to have effect at times or in circumstances specified in, or determined in accordance with, a licence condition, or
  - (b) provide for the CAA to determine which financial arrangements benefit from the exception.
- (6) A licence condition does not have effect at a time when—
- (a) the holder of the licence is not the operator of any part of the airport area for which the licence is granted, or
  - (b) that airport area is not a dominant area located at a dominant airport (or part of such an area) and does not include all or part of such an area,
- and provision included in a licence under subsection (1)(a) has effect subject to this subsection.

### *Modifying licences*

## **22 Modifying licence conditions and licence area**

- (1) The CAA may modify a licence by modifying—
- (a) the licence conditions, or
  - (b) the area for which the licence is granted,
- subject to section 23.

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- (2) Before modifying a licence in reliance on this section, the CAA must—
  - (a) publish a notice in relation to the proposed modification,
  - (b) send a copy of the notice to the persons listed in subsection (3), and
  - (c) consider any representations about the proposed modification that are made in the period specified in the notice (and not withdrawn).
- (3) Those persons are—
  - (a) the holder of the licence, and
  - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (4) The notice under subsection (2) must—
  - (a) state that the CAA proposes to modify the licence,
  - (b) specify the proposed modification,
  - (c) give the CAA’s reasons for the proposed modification,
  - (d) state the effect of the proposed modification, and
  - (e) specify a reasonable period for making representations.
- (5) If, after publishing the notice under subsection (2), the CAA decides not to modify the licence in reliance on this section, the CAA must—
  - (a) publish a notice, giving its reasons, and
  - (b) send a copy of the notice to the persons listed in subsection (3).
- (6) If, after complying with subsections (2) to (4) in relation to a modification, the CAA decides to modify the licence in reliance on this section, the CAA must—
  - (a) publish a notice in relation to the modification, and
  - (b) send a copy of the notice to the persons listed in subsection (3).
- (7) The CAA is not to be treated as having complied with subsections (2) to (4) in relation to a modification of a licence if the modification differs significantly from the modification proposed in the notice under subsection (2).
- (8) The notice under subsection (6) must—
  - (a) specify the modification,
  - (b) specify the date from which the modification has effect (subject to paragraphs 7, 8 and 12 to 14 of Schedule 2),
  - (c) give the CAA’s reasons for the modification,
  - (d) state the effect of the modification,
  - (e) state how it has taken account of any representations made in the period specified in the notice under subsection (2), and
  - (f) state the reason for any differences between the modifications and those set out in the notice given under subsection (2).
- (9) In the case of a modification of a licence condition, the date specified under subsection (8)(b) must fall after the end of the period of 6 weeks beginning with the day on which the notice under subsection (6) was published (subject to paragraph 21(2) of Schedule 2).

## **23      Restriction on power to modify**

- (1) This section applies where—



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- (a) a licence condition is subject to an exception (however expressed) relating to, or operating by reference to, financial arrangements specified or described in the licence,
  - (b) the financial arrangements were entered into by the holder of the licence, or a person connected to the holder of the licence, before section 3 came into force, and
  - (c) the CAA proposes to modify the licence by removing or restricting the exception.
- (2) The CAA may not make such a modification unless it has determined that—
- (a) there has been a material change of circumstances since the day on which the exception was included in the licence condition, and
  - (b) for users of air transport services, the benefits of the modification are likely to outweigh any adverse effects.
- (3) On or before the day on which it publishes a notice under section 22(2) in respect of a proposal to make such a modification, the CAA must—
- (a) publish a notice of its determination under subsection (2) of this section, giving its reasons for the determination, and
  - (b) send a copy of the notice to the persons listed in subsection (4).
- (4) Those persons are—
- (a) the holder of the licence, and
  - (b) such bodies representing airport operators or providers of transport services as the CAA considers appropriate.
- (5) For the purposes of subsection (1)(b), financial arrangements entered into after section 3 came into force but pursuant to other financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before that time are to be treated as entered into before that time.
- (6) In subsection (2) “material change of circumstances” includes a material change in the terms of the financial arrangements.

*Appeals against licence conditions etc*

**24 Appeal to Competition Commission: conditions of new licences**

- (1) An appeal lies to the Competition Commission against a decision by the CAA under section 15 to include, or not to include, a condition in a licence when it is granted.
- (2) An appeal may be brought under this section only by—
  - (a) the holder of the licence, or
  - (b) a provider of air transport services whose interests are materially affected by the decision.
- (3) An appeal may be brought under this section only with the permission of the Competition Commission.
- (4) An application for permission to appeal under this section may be made only by a person who, if permission is granted, will be entitled to bring the appeal.

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- (5) The Competition Commission may refuse permission to appeal under this section only on one of the following grounds—
- (a) that the appeal is brought for reasons that are trivial or vexatious, or
  - (b) that the appeal does not have a reasonable prospect of success.

## **25 Appeal to Competition Commission: modification of licence conditions**

- (1) An appeal lies to the Competition Commission against a decision by the CAA to modify a licence condition under section 22.
- (2) An appeal may be brought under this section only by—
  - (a) the holder of the licence, or
  - (b) a provider of air transport services whose interests are materially affected by the decision.
- (3) An appeal may be brought under this section only with the permission of the Competition Commission.
- (4) An application for permission to appeal under this section may be made only by a person who, if permission is granted, will be entitled to bring the appeal.
- (5) The Competition Commission may refuse permission to appeal under this section only on one of the following grounds—
  - (a) that the appeal is brought for reasons that are trivial or vexatious,
  - (b) that the appeal does not have a reasonable prospect of success, or
  - (c) that subsection (6) is satisfied.
- (6) This subsection is satisfied if the appeal is brought—
  - (a) against a decision that relates entirely to a matter remitted to the CAA following an earlier appeal under section 24 or this section, and
  - (b) on grounds that were considered, or could have been raised by the current applicant or a relevant connected person, as part of the earlier appeal.
- (7) In subsection (6), in relation to an applicant, “relevant connected person” means a person who was connected to the applicant at any time during the consideration of the earlier appeal by the Competition Commission.

## **26 When appeals may be allowed**

The Competition Commission may allow an appeal under section 24 or 25 only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that an error was made in the exercise of a discretion.

## **27 Determination of appeal**

- (1) Where it does not allow an appeal under section 24 or 25, the Competition Commission must confirm the decision appealed against.

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- (2) Where it allows an appeal under section 24 or 25, the Competition Commission must do one or more of the following—
  - (a) quash the decision appealed against;
  - (b) remit the matter that is the subject of the decision appealed against to the CAA for reconsideration and decision in accordance with this Chapter and any directions given by the Commission;
  - (c) substitute its own decision for that of the CAA.
- (3) Where it allows only part of an appeal under section 24 or 25—
  - (a) subsection (2) applies in relation to the part of the decision appealed against in respect of which the appeal is allowed, and
  - (b) subsection (1) applies in relation to the rest of that decision.
- (4) Where the Competition Commission substitutes its own decision for that of the CAA, the Commission may give directions to—
  - (a) the CAA, and
  - (b) the holder of the licence.
- (5) The Competition Commission must not give a direction under this section that requires a person to do anything that the person would not have power to do apart from the direction.
- (6) A person to whom a direction is given under this section must comply with it.
- (7) A direction given under this section to a person other than the CAA is enforceable—
  - (a) in England and Wales and Northern Ireland, as if it were an order of the High Court, and
  - (b) in Scotland, as if it were an order of the Court of Session.

## **28 Determination of appeal: time limits**

- (1) The Competition Commission must determine an appeal under section 24 or 25 against a decision in respect of a licence within the period of 24 weeks beginning with the day on which the CAA published the relevant notice, subject to subsections (3) to (6).
- (2) In subsection (1) “the relevant notice” means—
  - (a) in the case of an appeal under section 24, the notice published in accordance with section 15 of the decision to grant the licence, and
  - (b) in the case of an appeal under section 25, the notice published in accordance with section 22 of the decision that is the subject of the appeal.
- (3) The Competition Commission may extend the appeal period by not more than 8 weeks if it is satisfied that there are good reasons for doing so.
- (4) The Competition Commission may only extend the appeal period once in reliance on subsection (3).
- (5) The Competition Commission may extend the appeal period by such period as it considers appropriate if—
  - (a) there is an appeal to the Competition Appeal Tribunal under this Chapter which the Commission considers may be relevant to the appeal under section 24 or 25, and
  - (b) the appeal to the Tribunal has not been determined or withdrawn.

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- (6) The Competition Commission may extend the appeal period more than once in reliance on subsection (5).
- (7) If the Competition Commission extends the appeal period it must—
  - (a) publish a notice stating the new time limit for determining the appeal, and
  - (b) send a copy of the notice to the persons listed in subsection (8).
- (8) Those persons are—
  - (a) the holder of the licence which is the subject of the appeal,
  - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,
  - (c) any other person with a qualifying interest in the decision that is the subject of the appeal (see paragraph 35(4) of Schedule 2),
  - (d) such bodies representing airport operators or providers of air transport services as the Competition Commission considers appropriate, and
  - (e) the CAA.
- (9) The Secretary of State may by regulations modify the periods of time specified in this section.
- (10) In this section “the appeal period”, in relation to an appeal under section 24 or 25, means the period allowed for determining the appeal.

## **29 Determination of appeal: publication etc**

- (1) A determination made by the Competition Commission on an appeal under section 24 or 25—
  - (a) must be contained in an order made by the Commission, and
  - (b) takes effect at the time specified in the order or determined in accordance with the order.
- (2) The order must set out the reasons for the determination.
- (3) The Competition Commission must—
  - (a) publish the order as soon as practicable after the determination is made, and
  - (b) send a copy of the order to the persons listed in subsection (4).
- (4) Those persons are—
  - (a) the holder of the licence which is the subject of the appeal,
  - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,
  - (c) any other person with a qualifying interest in the decision that is the subject of the appeal (see paragraph 35(4) of Schedule 2),
  - (d) such bodies representing airport operators or providers of air transport services as the Competition Commission considers appropriate, and
  - (e) the CAA.
- (5) The Competition Commission may exclude from publication under subsection (3) any information which it is satisfied is—
  - (a) commercial information, the disclosure of which would, or might in the Commission’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or

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- (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the Commission’s opinion, significantly harm the individual’s interests.
- (6) The CAA must take such steps as it considers requisite for it to comply with the order.
- (7) The steps must be taken—
- (a) if a time is specified in the order or is to be determined in accordance with the order, within that time, and
  - (b) otherwise, within a reasonable time.

### **30 Procedure on appeals**

- (1) Schedule 2 (appeals under sections 24 and 25) has effect.
- (2) In carrying out the functions listed in subsection (3) the Competition Commission must have regard to the matters in respect of which duties are imposed on the CAA by section 1.
- (3) Those functions are—
- (a) deciding an application for permission to appeal under section 24 or 25,
  - (b) deciding an application under Schedule 2 for permission to intervene in an appeal, and
  - (c) determining an appeal under section 24 or 25, including taking decisions and giving directions described in section 27.
- (4) The functions of the Competition Commission under this Chapter are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out).

#### *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



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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.

### *Revocation of licence*

#### **48 Revocation of licence**

- (1) A licence may be revoked by the CAA by giving a notice to the holder of the licence.
- (2) The CAA may give a notice revoking a licence only in circumstances specified in the licence in accordance with section 17.
- (3) Before revoking a licence, the CAA must—
  - (a) notify the holder of the licence that it intends to revoke the licence, giving its reasons, and
  - (b) give the holder of the licence an opportunity to make representations.
- (4) The CAA must not give a notice revoking a licence before the end of the period of 30 days beginning with the day on which the CAA notifies the holder of the licence in accordance with subsection (3), unless the holder of the licence agrees otherwise.
- (5) A notice revoking a licence takes effect at the end of the period specified in the notice (subject to paragraph 1(3) of Schedule 4).
- (6) The period specified in the notice must be a period of not less than 30 days beginning with the day on which the notice is given.
- (7) The CAA may extend the period specified in the notice at any time before the end of that period by giving a notice to the holder of the licence.
- (8) The CAA may only extend the period once and only by up to 30 days.
- (9) The CAA may withdraw a notice revoking a licence at any time before it takes effect by giving a further notice to the holder of the licence.
- (10) A notice under subsection (1) or (9) must give the CAA's reasons for revoking the licence or withdrawing a notice revoking the licence (as appropriate).
- (11) As soon as practicable after giving a notice under subsection (1), (7) or (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.

#### **49 Appeals against revocation of licence**

Schedule 4 (appeals against revocation of licence) has effect.

### *Obtaining information*

#### **50 Power to obtain information**

- (1) The CAA may by notice require a person to provide—
  - (a) information, or
  - (b) a document that is in the person's custody or under the person's control.



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- (2) The CAA may give a notice under this section only in respect of information or documents that it reasonably requires for the purpose of carrying out its functions under this Chapter.
- (3) The notice may require the information or document to be provided—
  - (a) at a time and place specified in the notice, and
  - (b) in a form and manner specified in the notice.
- (4) The notice may not require a person to provide information or documents that the person could not be compelled to provide in evidence in civil proceedings before the appropriate court.
- (5) “The appropriate court” means—
  - (a) in relation to England and Wales and Northern Ireland, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

## **51 Enforcement of information notice**

- (1) If a person fails to comply with a notice under section 50 without reasonable excuse, the CAA may do either or both of the following—
  - (a) impose a penalty on the person;
  - (b) enforce the duty to comply with the notice in civil proceedings for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.
- (2) The amount of the penalty must be such amount as the CAA determines to be—
  - (a) appropriate, and
  - (b) proportionate to the failure in respect of which it is imposed.
- (3) A penalty may consist of either or both of the following—
  - (a) a fixed amount;
  - (b) an amount payable in respect of each day in a period specified by the CAA (a “daily amount”).
- (4) A fixed amount must not exceed £2,000,000.
- (5) A daily amount must not exceed £100,000.
- (6) A specified period during which daily amounts accumulate must be such period as the CAA considers appropriate, subject to subsections (7) and (8).
- (7) The period must begin after the day on which the CAA gives the notice under section 54(1) stating that it has imposed the penalty.
- (8) The period must end before the day on which the person provides the information or documents specified in the notice under section 50.
- (9) The Secretary of State may by regulations replace the amount for the time being specified in subsection (4) or (5).

## **52 Penalty for providing false information, destroying documents etc**

- (1) The CAA may impose a penalty on a person if, in relevant circumstances, the person provides information to the CAA that is false or misleading in a material respect and—

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- (a) the person knows that the information is false or misleading, or
  - (b) the person is reckless as to whether the information is false or misleading.
- (2) A person provides information in relevant circumstances if the person does so—
- (a) in accordance with a licence condition,
  - (b) in response to a notice under section 50, or
  - (c) knowing that the CAA is likely to use the information for the purpose of carrying out its functions under this Chapter.
- (3) The CAA may impose a penalty on a person if the person intentionally alters, suppresses or destroys a document that the person is required to produce by a notice under section 50.
- (4) The amount of a penalty imposed on a person under this section must be such amount as the CAA determines to be—
- (a) appropriate, and
  - (b) proportionate to the action in respect of which it is imposed.

### 53 Procedure before imposing penalty

- (1) Before imposing a penalty on a person under section 51 or 52 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
  - (d) consider any representations made about the proposed penalty in the period specified in the notice (and not withdrawn).
- (2) The notice under subsection (1) must—
- (a) state that the CAA proposes to impose a penalty,
  - (b) state the proposed amount of the penalty, and
  - (c) give the CAA's reasons for imposing the penalty.
- (3) In the case of a penalty under section 51 calculated entirely or partly by reference to a daily amount, the 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 the 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

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- (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 under section 51 calculated entirely or partly by reference to a daily amount, 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.

#### **54 Procedure after imposing penalty**

- (1) As soon as practicable after imposing a penalty on a person under section 51 or 52, 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) give the CAA's reasons for imposing the penalty, and
  - (d) 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 under section 51 calculated entirely or partly by reference to a daily amount, 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.

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## **55 Appeals against penalties**

Schedule 5 (appeals against penalties: information) has effect.

### *Penalties*

## **56 Imposing penalties**

- (1) The CAA may not impose a penalty on a person under section 39, 40 or 51 for an act or omission if it has imposed a penalty on the person under one of those sections in respect of the same act or omission.
- (2) Subsection (1) does not prevent the CAA imposing more than one penalty on a person in respect of acts or omissions that take place at different times or over different periods.

## **57 Recovering penalties**

- (1) This section applies if all or part of a penalty imposed on a person under this Chapter is not paid within the period specified in the notice given in respect of the penalty under—
  - (a) section 42, or
  - (b) section 54.
- (2) The unpaid balance carries interest from time to time at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (3) The CAA may recover from the person as a debt due to the CAA—
  - (a) the unpaid balance, and
  - (b) any interest on the penalty that has not been paid.
- (4) Any sums received by the CAA by way of a penalty or interest under this Chapter must be paid into the Consolidated Fund.

## **58 Statement of policy on penalties**

- (1) The CAA must prepare and publish a statement of its policy with respect to—
  - (a) imposing penalties under this Chapter, and
  - (b) determining their amount.
- (2) The CAA may revise the statement of policy and, if it does so, it must publish the revised statement.
- (3) When imposing a penalty under this Chapter, or determining the amount of such a penalty, the CAA must have regard to the last statement of policy published before the act or omission in respect of which the penalty is to be imposed.
- (4) When preparing or revising a statement of policy, the CAA must consult such persons as it considers appropriate.

### *Disclosing information*

#### **59 Disclosing information**

- (1) Nothing in this Chapter requires the CAA to publish or otherwise disclose any information which it is satisfied is—
  - (a) commercial information, the disclosure of which would, or might in the CAA’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CAA’s opinion, significantly harm the individual’s interests.
- (2) Schedule 6 (restrictions on disclosing information) has effect.