
STATUTORY INSTRUMENTS

1997 No. 2389

CIVIL AVIATION

The Airports (Groundhandling) Regulations 1997

Made - - - - 3rd October 1997

Laid before Parliament 3rd October 1997

Coming into force in accordance with regulation 1

The Secretary of State for Transport, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to matters relating to air transport, in exercise of the powers conferred by that section, and of all other powers enabling him in that behalf, hereby makes the following Regulations—

Citation and commencement

1.—(1) These Regulations may be cited as the Airports (Groundhandling) Regulations 1997.

(2) This regulation and regulations 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21 and 26 shall come into force on 27th October 1997.

(3) Regulation 8(b) shall come into force on 1st January 1998.

(4) Regulations 8(a), 17, 18, 22, 23, 24 and 25 shall come into force—

(a) in relation to category A airports, on 1st January 1999; and

(b) in relation to category B airports, on 1st January 2001.

(5) Regulations 15, 16 and 19 shall come into force—

(a) in so far as they relate to self-handling, on 1st January 1998; and

(b) in so far as they relate to suppliers of groundhandling services—

(i) in relation to category A airports, on 1st January 1999; and

(ii) in relation to category B airports on 1st January 2001.

Interpretation

2.—(1) In these Regulations—

“airport” means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for

(1) S.I.1993/2661.

(2) 1972 c. 68.

the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

“airport system” means two or more airports grouped together to serve the same city or conurbation, as referred to in Annex II to Council Regulation (EEC) No. 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes⁽³⁾;

“airports user” means any person responsible for the carriage of passengers, mail or freight by air from or to the airport in question;

“airside services” means the following categories of groundhandling services:

- (a) baggage handling;
- (b) freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft;
- (c) fuel and oil handling;
- (d) ramp handling;

“category A airport” means an airport—

- (a) whose annual traffic is not less than 3 million passenger movements or 75,000 tonnes of freight; or
- (b) whose traffic has been not less than 2 million passenger movements or 50,000 tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year;

“category B airport” means an airport whose annual traffic is not less than 2 million passenger movements or 50,000 tonnes of freight;

“category C airport” means an airport whose annual traffic is not less than 1 million passenger movements or 25,000 tonnes of freight;

“the CAA” means the Civil Aviation Authority;

“the Directive” means Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports⁽⁴⁾;

“groundhandling” means the services provided to airport users at airports as described in the Annex to the Directive;

“the independent examiner” means the person appointed, pursuant to regulation 18, by the CAA as an independent examiner;

“managing body of the airport” means a body which, in conjunction with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the co-ordination and control of the activities of the different operators present in the airport or airport system concerned;

“self-handling” means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where—

- (a) one holds a majority holding in the other; or
- (b) a single body has a majority holding in each; and

“supplier of groundhandling services” means any person supplying third parties with one or more categories of groundhandling services and in—

- (a) regulations 8(a), 10(8) and 27(1)(b); and

(3) O.J. No. L240, 24.8.92, p.8.

(4) O.J. No. L272, 25.10.96, p.36.

- (b) save to the extent that it applies to applications made pursuant to regulation 14(1) or 15(1), paragraph 12 of Schedule 1 to these Regulations

includes a person who sought, or who seeks, or would have wished, to be a supplier of groundhandling services.

(2) Other expressions used in these Regulations have, in so far as the context admits, the same meaning as in the Directive and cognate expressions shall be construed accordingly.

(3) These Regulations shall have effect for the purpose of making such provision as is necessary to comply with the Directive and shall be construed accordingly.

(4) Any reference in these Regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations.

Managing body of the airport

3.—(1) Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of those bodies shall be considered part of the managing body of the airport for the purposes of these Regulations.

(2) Where only a single managing body is set up for several airports or airport systems, each of those airports or airport systems shall be considered separately for the purposes of these Regulations.

Service of documents

4.—(1) Any notice or other document required or authorised by any provision of these Regulations to be served on or given to any person may be served or given—

- (a) by delivering it to that person;
- (b) by leaving it at his proper address;
- (c) by sending it to him by post at that address; or
- (d) by sending it to him at that address by telex or by facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as served when it is received.

(2) Any notice or other document required or authorised by any provision of these Regulations to be served on or given to any person may—

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.

(3) For the purposes of this regulation and of section 7 of the Interpretation Act 1978(5) (service of documents by post) in its application to this regulation, the proper address of any person on whom any notice or other document is to be served or to whom any such notice or other document is to be given shall be his last known address, except that—

- (a) in the case of a body corporate, it shall be the address of the registered or principal office of that body; and
- (b) in the case of a partnership, it shall be the principal office of the partnership

and, for the purposes of this paragraph, where a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom has an office in the United Kingdom, the principal office of that company or partnership shall be their principal office in the United Kingdom.

Application

5.—(1) These Regulations apply to airports in the United Kingdom which are open to commercial traffic.

- (2) The following provisions apply only to category A and category B airports:
 - (a) regulations 8(a), 11(1), 12, 13, 17, 18, 22, 23, 24 and 25;
 - (b) subject to paragraph (4) thereof, regulation 10; and
 - (c) in so far as they relate to suppliers of groundhandling services, regulations 15 and 16.
- (3) The following provisions apply only to category A, category B and category C airports:
 - (a) in so far as it relates to airside services, regulation 8(b);
 - (b) subject to paragraph (5) thereof, regulation 9;
 - (c) regulation 11(2)(b); and
 - (d) in so far as they relate to self-handling for airside services, regulations 15 and 16.

(4) Where an airport reaches one of the freight traffic thresholds referred to in the definitions in regulation 2 of category A, category B or category C airports the provisions of these Regulations shall not apply to categories of groundhandling services reserved exclusively for passengers save to the extent that they apply by virtue of the airport having also reached one of the passenger movement thresholds referred to in those definitions.

Airport Users' Committee

6.—(1) On or before 14th November 1997 the managing body of an airport shall set up a committee of representatives of airport users or organisations representing airport users in accordance with this regulation.

(2) All airport users shall have the right to be on the committee or, if they so wish, to be represented on it by an organisation appointed to that effect.

Consultation

7.—(1) The managing body of an airport shall ensure that, at least once a year, a consultation relating to the application of these Regulations takes place between itself, the committee referred to in regulation 6 and the persons providing groundhandling services at the airport.

- (2) The consultation referred to in paragraph (1) above shall cover, inter alia:
 - (a) the price of those groundhandling services for which a determination has been made pursuant to regulation 11(1)(b); and
 - (b) the organisation of the provision of those services.

Prohibition of restrictions

8. Save as otherwise provided in these Regulations, the managing body of an airport shall take the necessary measures to—

- (a) ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties; and
- (b) ensure the freedom to self-handle.

Self-handling

9.—(1) The CAA may, on an application made to it by the managing body of an airport, determine that, at the airport or part of the airport, the right to self-handle in relation to one or more airside services shall be limited for such period as the CAA thinks fit.

- (2) A determination made pursuant to paragraph (1) above shall specify—
- (a) the airport and, where appropriate, the part of the airport to which it applies;
 - (b) the airside services to which it relates;
 - (c) the number of airport users who may exercise the right to self-handle in relation to those services, which shall be no fewer than two for each category of such services;
 - (d) the airport users who may exercise that right;
 - (e) the period for which it shall apply; and
 - (f) save where it is made by virtue of paragraph (5) below, the date on which it takes effect.

(3) The CAA shall choose the airport users who may exercise the right to self-handle on the basis of relevant, objective, transparent and non-discriminatory criteria.

(4) A determination made pursuant to paragraph (1) above shall not take effect earlier than 1st January 1998.

(5) A determination may be made pursuant to paragraph (1) above in relation to an airport appearing to the CAA to be about to become a category C airport.

(6) Save where, by virtue of paragraph (8) below, the determination is deemed not to have been made, where an airport in relation to which a determination has been made by virtue of paragraph (5) above becomes a category C airport, the managing body of that airport shall serve on the CAA notice to that effect.

(7) Subject to paragraphs (4) above and (8) below, a determination made by virtue of paragraph (5) above shall take effect on the date on which the CAA publishes a notice in its Official Record in accordance with paragraph 18 of Schedule 1 to these Regulations.

(8) Where a determination is made by virtue of paragraph (5) above and the CAA has not received from the managing body of the airport within the period of 18 months beginning on the date on which the determination was made a notice in accordance with paragraph (6) above, the determination shall be deemed not to have been made.

(9) Where an application is made pursuant to paragraph (1) above, the provisions of Schedule 1, in so far as they relate to such applications, shall apply.

Groundhandling for third parties

10.—(1) The CAA may, on an application made to it by the managing body of an airport, determine that, at the airport or part of the airport, the number of suppliers authorised to provide one or more airside services to third parties shall be limited.

- (2) A determination made pursuant to paragraph (1) above shall specify:
- (a) the airport and, where appropriate, the part of the airport to which it applies;
 - (b) the airside services to which it relates;
 - (c) the number of suppliers authorised to provide those services, which shall be no fewer than two for each category of such services; and
 - (d) save where it is made by virtue of paragraph (4) below, the date on which it takes effect.
- (3) A determination made pursuant to paragraph (1) above shall not take effect earlier than—
- (a) at a category A airport, 1st January 1999; or

(b) at a category B airport, 1st January 2001.

(4) A determination may be made pursuant to paragraph (1) above in relation to an airport appearing to the CAA to be about to become a category A or a category B airport.

(5) Save where, by virtue of paragraph (7) below, the determination is deemed not to have been made, where an airport in relation to which a determination has been made by virtue of paragraph (4) above becomes a category A or, as the case may be, a category B airport, the managing body of that airport shall serve on the CAA notice to that effect.

(6) Subject to paragraph (3) above and (7) below, a determination made by virtue of paragraph (4) above shall take effect on the date on which the CAA publishes a notice in its Official Record in accordance with paragraph 18 of Schedule 1 to these Regulations.

(7) Where a determination is made by virtue of paragraph (4) above and the CAA has not received from the managing body of the airport within the period of 18 months beginning on the date on which the determination was made a notice in accordance with paragraph (5) above, the determination shall be deemed not to have been made.

(8) On its own proposal or on an application made to it by—

- (a) the managing body of the airport concerned;
- (b) a supplier of groundhandling services; or
- (c) an airport user

the CAA may vary from time to time or revoke a determination made pursuant to paragraph (1) above.

(9) Where an application is made pursuant to paragraph (1) above or where an application or a proposal is made pursuant to paragraph (8) above, the provisions of Schedule 1 to these Regulations, in so far as they relate to such applications or, as the case may be, proposals, shall apply.

(10) In any case where the number of suppliers of groundhandling services is restricted pursuant to paragraph (1) above, the Secretary of State, the CAA and the managing body of the airport concerned shall not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling services subject to that restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in Article 6(2) and (3) of the Directive.

Determinations requiring Commission approval

11.—(1) Where at an airport specific constraints of available space or capacity, arising in particular from congestion and area utilisation rate, make it impossible to open up the market for the supply of groundhandling services to the degree provided for in the Directive, the CAA may, on an application made to it by the managing body of the airport concerned, determine to:

- (a) limit the number of suppliers of one or more categories of groundhandling services, other than airside services, to no fewer than two suppliers for each category of groundhandling services; or
- (b) reserve to a single supplier one or more airside services

at the airport or part of the airport.

(2) Where at an airport specific constraints of available space or capacity, arising in particular from congestion and area utilisation rate, make it impossible to implement self-handling to the degree provided for in the Directive, the CAA may, on an application made to it by the managing body of the airport concerned, determine to:

- (a) reserve self-handling to a limited number of airport users for one or more categories of groundhandling services other than airside services; or

(b) ban self-handling or restrict it to a single airport user for one or more airside services at the airport or part of the airport.

(3) A determination made pursuant to paragraph (1) or (2) above shall specify:

- (a) the airport and, where appropriate, the part of the airport to which it applies;
- (b) the groundhandling services to which it relates;
- (c) the number of suppliers of groundhandling services authorised to provide those services or, as the case may be, the number of airport users who may exercise the right to self-handle in relation to those services;
- (d) in the case of a determination made pursuant to paragraph (2) above, the airport users who may exercise that right;
- (e) the specific constraints of available space or capacity which justify the determination;
- (f) the period for which it shall apply; and
- (g) the date on which it takes effect.

(4) Where the CAA has made a determination pursuant to paragraph (2) above, it shall choose the airport users who may exercise the right to self-handle on the basis of relevant, objective, transparent and non-discriminatory criteria.

(5) A determination made pursuant to paragraph (1) or (2) above, other than a determination made pursuant to paragraph (1)(b) above, shall be made for a period not exceeding three years.

(6) A determination made pursuant to paragraph (1)(b) above shall be made for a period not exceeding two years.

(7) A determination made by the CAA pursuant to paragraph (1) or (2) above shall not:

- (a) unduly prejudice the aims of the Directive;
- (b) give rise to distortions of competition between suppliers of groundhandling services or self-handling airport users or both;
- (c) extend further than necessary.

(8) A determination made by the CAA pursuant to paragraph (1) above shall not take effect earlier than—

- (a) at a category A airport, 1st January 1999; or
- (b) at a category B airport, 1st January 2001.

(9) A determination made pursuant to paragraph (2) above shall not take effect earlier than 1st January 1998.

(10) Where an application is made pursuant to paragraph (1) or (2) above, the provisions of Schedule 1 to these Regulations, in so far as they relate to such applications, shall apply.

(11) The CAA shall notify the Commission of any determination made by it pursuant to paragraph (1) or (2) above at least three months before it takes effect.

(12) Where, pursuant to Article 9(5) of the Directive, the Commission makes a decision either opposing or requiring an amendment to a determination made pursuant to paragraph (1) or (2) above, the CAA shall forthwith revoke or, as the case may be, amend that determination.

(13) On an application made to it by the managing body of the airport concerned the CAA may determine to renew from time to time any determination made pursuant to paragraph (1) or (2) above save that a determination made pursuant to paragraph (1)(b) above may be renewed once only.

(14) Paragraphs (1) to (12) above shall apply, with the necessary modifications, to an application for and the making of a renewal determination under paragraph (13) above as they applied to the application for and the making of the determination the subject of the application for renewal.

(15) A determination made pursuant to paragraph (13) above shall be made no later than three months before the expiry of the determination which it is intended to renew and shall come into force no earlier than the date on which that determination expires.

Selection of suppliers

12.—(1) Where the CAA has made a determination to which this regulation applies, the managing body of the airport concerned shall take the necessary measures in accordance with this regulation for the organisation of a selection procedure for the suppliers authorised to provide groundhandling services.

(2) This regulation applies where the CAA has:

- (a) made a determination pursuant to regulation 10(1);
- (b) varied a determination made pursuant to regulation 10(1) and in doing so has altered the number of suppliers authorised to provide one or more groundhandling services;
- (c) made a determination pursuant to regulation 11(1); or
- (d) made a determination pursuant to regulation 11(1) which renews a determination made pursuant to regulation 11(1).

(3) Where paragraph (2)(b) above applies and the number of suppliers authorised to provide one or more airside services is increased, nothing in paragraph (1) above shall require the organisation of a selection procedure for the suppliers already selected to provide those services pursuant to paragraph (7) below.

(4) Where paragraph 2(b) above applies and the number of suppliers authorised to provide one or more airside services is reduced, any decisions previously made pursuant to paragraph (7) below in relation to those services shall cease to be valid upon the selection of the reduced number of suppliers authorised to provide those services.

(5) For the purpose of selecting the suppliers referred to in paragraph (1) above, the managing body of the airport shall cause an invitation to tender, which complies with paragraph (6) below, to be published in the Official Journal of the European Communities.

(6) An invitation to tender which is published pursuant to paragraph (5) above shall specify—

- (a) the period for which the suppliers will be selected; and
- (b) the deadline for the submission of tenders (which shall be no earlier than 1 month from the date on which the invitation to tender is published beginning on that date).

(7) The suppliers of groundhandling services shall be selected:

- (a) following consultation with the committee referred to in regulation 6, by the managing body of the airport provided that body—
 - (i) does not provide similar groundhandling services;
 - (ii) has no direct or indirect control over any undertaking which provides such services; and
 - (iii) has no involvement in any such undertaking;
- (b) in all other cases, following consultation with the committee referred to in regulation 6 and the managing body of the airport, by the CAA.

(8) A decision made pursuant to paragraph (7) above shall not take effect earlier than—

- (a) at a category A airport, 1 January 1999; or
- (b) at a category B airport, 1 January 2001.

(9) A supplier of groundhandling services shall be selected for a period not exceeding seven years.

(10) Where a supplier of groundhandling services ceases his activity before the end of the period for which he was selected, he shall be replaced in accordance with paragraphs (1) and (5) to (9) above.

(11) Subject to paragraph (12) below, when making a decision pursuant to paragraph (7) above on or after the relevant date, the managing body of the airport or, as the case may be, the CAA shall ensure that at least one of the authorised suppliers is not directly or indirectly controlled by:

- (a) that managing body;
- (b) any airport user who has carried more than 25% of the passengers or freight recorded at the airport during the preceding year; or
- (c) a person controlling, or controlled directly or indirectly by, that managing body or any such user

and where at any time on or after the relevant date all of the authorised suppliers are directly or indirectly controlled by a person referred to in sub-paragraph (a), (b) or (c) of this paragraph, those suppliers shall be replaced in accordance with paragraphs (1) and (5) to (9) above.

(12) Paragraph (11) above shall not apply in relation to a determination made pursuant to regulation 11(1)(b).

(13) Where the Commission grants a deferral pursuant to Article 6(3) of the Directive the Secretary of State shall notify the CAA. On receipt of such notice, the CAA shall cause notice of the deferral to be published in its Official Record.

(14) The managing body of the airport concerned shall inform the committee referred to in regulation 6 and the CAA of any decisions it takes pursuant to paragraph (7)(a) above.

(15) The CAA shall cause notice of decisions made pursuant to paragraph (7) above to be published in its Official Record.

(16) In this regulation “relevant date” means 1st January 2001 or, where the Commission has granted a deferral pursuant to Article 6(3) of the Directive, 31st December 2002.

Managing body of the airport and connected persons providing groundhandling services

13. Where the CAA has made a determination pursuant to regulation 10(1) or 11(1) or where it has made a determination pursuant to regulation 11(13) which renews a determination made pursuant to regulation 11(1), the managing body of an airport may—

- (a) itself provide groundhandling services without being subject to the selection procedure laid down in regulation 12; and
- (b) authorise another person to provide groundhandling services at the airport concerned without submitting that person to the said procedure where—
 - (i) it controls that person directly or indirectly; or
 - (ii) that person controls it directly or indirectly.

Centralised infrastructures

14.—(1) On an application from the managing body of an airport, the CAA may determine to reserve for that managing body or for another person the management of the centralised infrastructures used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow of division or duplication, such as baggage sorting, de-icing, water purification and fuel-distribution systems.

(2) Where the management of a centralised infrastructure has been reserved by the CAA pursuant to paragraph (1) above, a supplier of groundhandling services or a self-handling airport user at

that airport shall not use any apparatus, equipment, system or other thing for the supply of the groundhandling services concerned as an alternative to that centralised infrastructure.

(3) The person for whom the management of a centralised infrastructure has been reserved pursuant to paragraph (1) above shall ensure that the management of that infrastructure is transparent, objective and non-discriminatory and, in particular, that it does not hinder the access of suppliers of groundhandling services or self-handling airport users within the limits provided for in these Regulations.

(4) Where an application is made pursuant to paragraph (1) above, the provisions of Schedule 1 to these Regulations, in so far as they relate to such applications, shall apply.

Prohibition of suppliers and airport users

15.—(1) Where, on an application made to it by the managing body of an airport, the CAA is satisfied that a supplier of groundhandling services or an airport user has failed to comply with a rule imposed upon him to ensure the proper functioning of the airport, and that rule—

- (a) is applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users; and
- (b) does not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in these Regulations

the CAA may, subject to regulation 10(10), determine to prohibit, for such period as it thinks fit, that supplier or user from supplying groundhandling services or, as the case may be, self-handling.

(2) A determination made pursuant to paragraph (1) above may apply to one or more categories of groundhandling services.

(3) A supplier of groundhandling services or an airport user in relation to whom a determination has been made pursuant to paragraph (1) above shall not supply groundhandling services or, as the case may be, self-handle in contravention of that determination.

(4) Where an application is made pursuant to paragraph (1) above, the provisions of Schedule 1 to these Regulations, in so far as they relate to such applications, shall apply.

(5) In this regulation “rule” includes an obligation contained in an agreement, a byelaw made under section 63 of the Airports Act 1986⁽⁶⁾ or Article 18 of the Airports (Northern Ireland) Order 1994⁽⁷⁾, or otherwise.

Access to airport installations

16. Subject to regulations 9, 10, 11, 14, 15 and 19, the managing body of an airport or, where appropriate, the public authority or any other body which controls it shall take the necessary measures to ensure that—

- (a) suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities;
- (b) any conditions it places upon such access are relevant, objective, transparent and non-discriminatory;
- (c) the space available for groundhandling at the airport is divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition on the basis of relevant, objective, transparent and non-discriminatory rules and criteria;

⁽⁶⁾ 1986 c. 31.

⁽⁷⁾ S.I. 1994/426 (N.I.1).

- (d) any fee charged for such access is determined according to relevant, objective, transparent and non-discriminatory criteria.

Separation of accounts

17.—(1) A person to whom this regulation applies shall rigorously separate the accounts of his groundhandling activities from the accounts of his other activities in accordance with current commercial practice.

(2) This regulation applies to:

- (a) a supplier of groundhandling services; and
- (b) where they provide groundhandling services,
 - (i) the managing body of an airport; and
 - (ii) an airport user.

(3) A person who fails without reasonable excuse to comply with the requirements of paragraph (1) above shall be guilty of an offence.

(4) The managing body of an airport shall not cause or permit its groundhandling activities to be subsidised from the revenue it derives from its role as an airport authority.

Independent examiner

18.—(1) In any case where, pursuant to regulation 17, the managing body of an airport, an airport user or a supplier of groundhandling services is required to separate its accounts, the CAA shall appoint in relation to that managing body, airport user or supplier a person to undertake the duties of the independent examiner described in this regulation.

(2) The CAA may by notice in writing served on the independent examiner and on the person in relation to whom he has been appointed revoke an appointment made by it pursuant to paragraph (1) above.

(3) The independent examiner shall check that the required separation of accounts is carried out.

(4) The independent examiner appointed in relation to the managing body of an airport shall also check whether there are or have been any financial flows between the activity of the managing body as airport authority and its groundhandling activity.

(5) Within a period of 15 months beginning on the date of his appointment, and at least once a year thereafter, the independent examiner shall prepare a written statement containing the results of the checks he has carried out pursuant to paragraph (3) above and, where he has been appointed in relation to the managing body of an airport, paragraph (4) above.

(6) The independent examiner shall send a copy of the statement prepared by him pursuant to paragraph (5) above to the CAA.

(7) The CAA shall cause any statements it receives pursuant to paragraph (6) above to be published in its Official Record.

(8) The independent examiner shall be entitled to recover from the person in relation to whom he has been appointed a sum equal to any expense reasonably incurred by him in undertaking the duties of the independent examiner described in this regulation.

Reciprocity

19.—(1) Where it appears to the Secretary of State that a third country, with respect to access to the groundhandling or self-handling market:

- (a) does not, *de jure* or *de facto*, grant suppliers of groundhandling services and self-handling airport users from the United Kingdom or another Member State treatment comparable to that granted by the United Kingdom or, as the case may be, that other Member State to suppliers of groundhandling services and self-handling airport users from that third country; or
- (b) grant suppliers of groundhandling services and self-handling airport users from that third country or from other third countries more favourable treatment than suppliers of groundhandling services and self-handling airport users from the United Kingdom or another Member State

the Secretary of State may wholly or partially suspend the obligations arising from these Regulations in respect of suppliers of groundhandling services and airport users from that third country.

(2) The Secretary of State shall inform the Commission of any withdrawal or suspension of rights or obligations pursuant to paragraph (1) above.

(3) In this regulation “third country” means any country or territory other than the United Kingdom, any other Member State or Gibraltar.

Appeals

20.—(1) Any person who is aggrieved by a decision or individual measure taken pursuant to regulation 7, 12 or 16 by the managing body of an airport or, in the case of regulation 16, the public authority or other body controlling the airport shall have the right to appeal to the CAA and the provisions of Part I of Schedule 2 to these Regulations shall apply in relation to such an appeal.

(2) Subject to paragraph (3) below, any person who is aggrieved by a determination made by the CAA pursuant to regulations 9, 12 or 15 shall have the right to appeal to the Secretary of State and the provisions of Part II of Schedule 2 to these Regulations shall apply in relation to such an appeal.

(3) Where, by virtue of regulation 9(8), a determination made pursuant to regulation 9(1) is deemed not to have been made, any appeal which has been commenced pursuant to paragraph (2) above in relation to that determination shall be discontinued.

(4) A determination made pursuant to regulation 15 shall not take effect before the expiration of the period within which an appeal may be made against that determination (which period is described in Part II of Schedule 2 to these Regulations) nor, if such an appeal is brought within that period, before the determination or abandonment of the appeal.

Supplementary provisions with regard to the CAA

21.—(1) A determination under these Regulations may not be made on behalf of the CAA by any other person.

(2) Section 4 of the Civil Aviation Act 1982⁽⁸⁾ shall not apply in relation to the performance by the CAA of its functions under these Regulations.

Furnishing of information etc. to CAA

22.—(1) The CAA may by a notice in writing served on any person require him to furnish to the CAA, in such form and at such times as may be specified in the notice, information of such descriptions as may be so specified which relates to the accounts of any person to whom the requirements of regulation 17 apply.

(2) A person shall not by virtue of paragraph (1) above be compelled—

(8) 1982 c. 16.

- (a) to produce any documents which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session, or
 - (b) in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (3) Any person who fails without reasonable excuse to comply with the requirements of a notice served on him under paragraph (1) above shall be guilty of an offence.
- (4) Any person who, in purported compliance with the requirements of any such notice, knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.

Restriction on disclosure of information

- 23.**—(1) Subject to paragraph (2) below, no information with respect to any particular business which has been obtained under or by virtue of regulation 22 shall, so long as the business continues to be carried on, be disclosed without the consent of the person for the time being carrying it on.
- (2) Paragraph (1) above does not apply to any disclosure of information which is made—
- (a) to the Secretary of State or an officer of his;
 - (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (c) for the purposes of any civil proceedings brought under or by virtue of these Regulations.
- (3) Nothing in paragraph (1) above shall be construed as applying to any information which has been made public in accordance with regulation 18(7).
- (4) Any person who discloses any information in contravention of this regulation shall be guilty of an offence.

Penalties

- 24.**—(1) A person who is guilty of an offence under regulation 17(3) or 22(4) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) A person who is guilty of an offence under regulation 22(3) shall be liable on summary conviction to a fine not exceeding the statutory maximum.
- (3) A person who is guilty of an offence under regulation 23(4) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Offences by bodies corporate and Scottish partnerships

- 25.**—(1) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be prosecuted against and punished accordingly.

Civil liability

26.—(1) The obligation on the managing body of an airport to comply with—

- (a) regulation 8(b) is a duty owed to airport users;
- (b) regulations 8(a) and 17(4) is a duty owed to suppliers of groundhandling services and airport users.

(2) The obligation on the Secretary of State, the CAA and the managing body of an airport to comply with regulation 10(10) is a duty owed to airport users.

(3) The obligation on the person for whom the management of a centralised infrastructure has been reserved pursuant to regulation 14(1) to comply with regulation 14(3) is a duty owed to suppliers of groundhandling services and airport users.

(4) The obligation on the CAA to comply with regulation 11(4) is a duty owed to airport users.

(5) The obligation on a supplier of groundhandling services or an airport user in relation to whom a determination has been made pursuant to regulation 15(1) to comply with regulation 15(3) is a duty owed to suppliers of groundhandling services and airport users.

(6) The obligation on the person to whom a direction is given pursuant to paragraph 8 of Part I of Schedule 2 to these Regulations to comply with that direction is a duty owed to suppliers of groundhandling services and airport users.

(7) A breach of the duty owed pursuant to paragraph (1), (2), (3), (4), (5) or (6) above shall not be a criminal offence but any breach of the duty shall be actionable by any such supplier or, as the case may be, airport user who, in consequence, suffers, or risks suffering, loss or damage.

(8) Proceedings under this regulation may not be brought unless—

- (a) the airport user or, as the case may be, the supplier bringing the proceedings has informed the person with the obligation of the breach or apprehended breach of the duty owed to him pursuant to paragraph (1), (2), (3), (4), (5) or (6) above and of his intention to bring proceedings under this regulation in respect of it; and
- (b) they are brought promptly and in any event within 3 months from the date when grounds for the bringing of the proceedings first arose unless the Court considers that there is good reason for extending the period within which proceedings may be brought.

(9) Notwithstanding sections 21 and 42 of the Crown Proceedings Act 1947⁽⁹⁾, in proceedings brought under this regulation against the Crown the Court shall have power to grant an injunction or interdict.

(9) 1947 c. 44; the Crown Proceedings Act 1947 was extended to Northern Ireland in relation to Her Majesty's Government in the United Kingdom and in Northern Ireland by and with the additions, exceptions and modifications set out in the Crown Proceedings (Northern Ireland) Order 1981 (S.I. 1981/233, to which there is an amendment not relevant to these Regulations).

Signed by authority of the Secretary of State for Transport

3rd October 1997

Glenda Jackson
Parliamentary Under Secretary of State,
Department of the Environment, Transport and
the Regions

SCHEDULE 1

Regulations 9(9), 10(9), 11(10), 14(4) and
15(4)

PROCEDURE FOR A DETERMINATION BY THE
CAA UNDER REGULATIONS 9, 10, 11, 14 AND 15

- (a) An application to which the provisions of this Schedule apply shall be made in writing to the CAA and, subject to paragraph 3 below, shall contain such particulars with respect to such matters as the CAA may specify in a notice published in its Official Record.
 - (b) A notice published pursuant to sub-paragraph (a) above may be altered or cancelled by subsequent notice published pursuant to that sub-paragraph.
2. An application made pursuant to regulation 11(1), (2) or (13) shall be accompanied by a plan of appropriate measures to overcome the specific constraints of available space or capacity which allegedly make it impossible to open up the market or, as the case may be, implement self-handling to the degree provided for in these Regulations.
3. The provisions of this Schedule apply, save as otherwise provided, to applications made to the CAA pursuant to regulations 9(1), 10(1) and (8), 11(1), (2) and (13), 14(1) and 15(1).
4. The CAA may refuse to consider an application unless it contains all the particulars specified by the CAA pursuant to paragraph 1 above.
5. Where, pursuant to regulation 10(8), the CAA proposes to revoke or vary a determination made pursuant to regulation 10(1), it shall serve on—
- (a) the managing body of the airport concerned, and
 - (b) any supplier of groundhandling services who, pursuant to regulation 12(7), has been selected in relation to that determination to provide groundhandling services at the airport
- notice of the proposal together with the reasons for it.
6. Where the managing body of an airport makes an application to the CAA pursuant to regulation 15(1), the CAA shall serve on the supplier of groundhandling services or the airport user to whom it relates a copy of the application.
7. In the following provisions of this Schedule, save where the context otherwise admits, “application” shall include a proposal in respect of which notice has been served pursuant to paragraph 5 above.
8. The CAA shall cause such particulars of the application as it thinks necessary for indicating the substance of the application to be published in its Official Record and shall make a copy of the application available at its principal office for inspection by any person at any reasonable time.
9. The publication referred to in paragraph 8 above shall specify a period for the service of objections or representations which period shall be not less than 14 days beginning on the date of publication unless the CAA is satisfied that for reasons of urgency it is desirable to specify a shorter period.
10. Any person may serve on the CAA an objection to, or representation about, an application published pursuant to paragraph 8 above where—
- (a) he does so in writing within the period specified in the publication referred to in that paragraph;
 - (b) in the case of an application referred to in paragraph 3 above, he serves a copy of his objection or representation on the applicant within 24 hours after it has been served on the CAA; and
 - (c) he states the grounds of his objection or representation.

11. Before the date fixed for the hearing of an application pursuant to paragraph 12 below, the CAA shall serve on any person who has the right to be heard in connection with the application or whom the CAA proposes to hear a copy of, or a summary of, any information in the possession of the CAA which has been provided in connection with the application or which the CAA has reason to believe will be referred to at the hearing of the application.

12.—(1) Subject to sub-paragraph (2) below, before any decision is made on an application published pursuant to paragraph 8 above the following persons shall have the right to be heard:

- (a) the managing body of the airport concerned;
- (b) an airport user;
- (c) save in the case of an application made pursuant to regulation 15(1) for a determination prohibiting an airport user from self-handling, a supplier of groundhandling services.

(2) No person (other than, in the case of an application referred to in paragraph 3 above, the applicant) shall have a right to be heard unless he has served an objection or representation pursuant to paragraph 10 above and in doing so has stated that he wishes to be heard.

(3) Notwithstanding that a person does not have a right to be heard, where he has served an objection or representation pursuant to paragraph 10 above the CAA may, if it thinks fit, hear him.

(4) No hearing shall be held pursuant to this paragraph unless the CAA has served on all persons having a right to be heard and whom it proposes to hear in connection with the application not less than 14 days' notice of the date, time and place of the hearing, and the notice shall clearly identify the application to which it relates; a similar notice shall be published not less than 7 days before the date of the hearing and shall be exhibited in a public place in the CAA's principal office during the 7 days immediately preceding the date of the hearing.

13.—(1) Hearings shall be conducted by the CAA, sitting with such employees of the CAA acting as advisers as it thinks fit.

(2) At a hearing every party to the case may appear in person or be represented by any other person whom he may have authorised to represent him and may produce oral and written evidence and may examine any other party to the case, any person whom the CAA hears pursuant to paragraph 12(3) above and any witnesses produced by any such party or person. The CAA may, to such extent as it thinks fit, permit any person heard by it pursuant to paragraph 12(3) above to exercise at the hearing the rights set out in this paragraph of a party to the case.

(3) Any person who has served an objection or representation pursuant to paragraph 10 above but who does not wish to be heard may make a written submission which he shall serve on the CAA not less than 3 working days before the date fixed for the hearing of the case.

(4) Every hearing shall be held in public unless the CAA otherwise decides in relation to the whole or part of a particular application, but nothing in this sub-paragraph shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending a hearing in his capacity as such.

- (a) Subject to sub-paragraphs (b) and (c) below, all the proceedings at a hearing of the CAA in connection with the application shall be recorded by a shorthand writer or by some other means, and if any person requests a record of the proceedings the CAA shall cause a mechanical recording or transcript of the shorthand or other record to be made available for purchase by that person at a reasonable price.
- (b) The CAA shall not be required to make available a mechanical recording or transcript of the record of the proceedings at any time after the expiry of one year from the day of publication of its decision on the application.

- (c) A mechanical recording or transcript of the record of proceedings conducted otherwise than in public shall only be required to be made available for purchase by any party to the case or by any other person heard by the CAA at those proceedings.

14. The CAA shall notify—

- (a) the managing body of the airport concerned;
- (b) in the case of an application made pursuant to regulation 10(8) by a person other than the managing body of the airport, that person;
- (c) any person whom it has heard in connection with the application; and
- (d) in the case of an application made pursuant to regulation 15(1), the supplier of groundhandling services or, as the case may be, the airport user in relation to whom the application was made

of its determination and of its reasons for the determination.

15. The CAA shall cause particulars of its determination and of its reasons for the determination to be published in its Official Record.

16. Where the CAA makes a determination pursuant to regulation 9(1) or 10(1), the particulars published pursuant to paragraph 15 above shall include:

- (a) the matters required by regulation 9(2) or, as the case may be, 10(2) to be specified in relation to such a determination; and
- (b) in the case of a determination made pursuant to regulation 9(1), the relevant, objective, transparent and non-discriminatory criteria on which the CAA based its choice of airport users in accordance with regulation 9(3).

17. Where the CAA makes a determination pursuant to regulation 11(1), (2) or (13), the particulars published pursuant to paragraph 15 above shall include—

- (a) the matters required by regulation 11(3) to be specified in relation to such a determination;
- (b) the place where, and the hours during which, a copy of the plan referred to in paragraph 2 above may be viewed; and
- (c) in the case of a determination made pursuant to regulation 11(2) or a determination made pursuant to regulation 11(13) which renews a determination made pursuant to regulation 11(2), the relevant, objective, transparent and non-discriminatory criteria on which the CAA based its choice of airport users in accordance with regulation 11(4).

18. Where, pursuant to regulation 9(6) or 10(5), notice is served on the CAA to the effect that an airport has become a category A, category B or, as the case may be, a category C airport, the CAA shall cause a notice to the same effect to be published in its Official Record. The CAA's notice shall also include a statement to the effect that the determination made in relation to that airport pursuant to regulation 9(1) or, as the case may be, 10(1) has taken effect.

19. Where, pursuant to regulation 11(12), the CAA revokes or amends a determination made by it pursuant to regulation 11(1), (2) or (13), it shall give notice of that revocation or amendment to the managing body of the airport and shall cause particulars of the revocation or amendment to be published in its Official Record.

20. The failure of the CAA or of any person to give notice or publish any particulars in the time or manner provided for in these Regulations or any other procedural irregularity shall not invalidate the action taken by the CAA; but the CAA may take such steps as it thinks fit before reaching its decision to cure the irregularity, whether by the giving of notice or otherwise, and shall take such steps if it considers that any person may have been prejudiced.

21. In this Schedule “party to the case” means a person having the right to be heard by virtue of paragraph 12(1) above.

SCHEDULE 2

Regulation 20

PART I

APPEALS TO THE CAA

1. An appeal to the CAA shall be made by a notice in writing, signed by or on behalf of the appellant, which clearly identifies the decision or individual measure to which it relates and states the grounds on which the appeal is based and the arguments on which the appellant relies.

2. The appellant shall serve the notice of appeal on:

- (a) the CAA;
- (b) the managing body of the airport concerned; and
- (c) in the case of an appeal against a decision or individual measure taken, pursuant to regulation 16, by the public authority or other body controlling the airport, that authority or body.

3.—(1) Where the appeal is against a decision of the managing body of an airport made pursuant to regulation 12(7)(a), the notice of appeal shall be served within a period of 1 month beginning on the date on which the decision was published by the CAA pursuant to regulation 12(15).

(2) In every other case, the notice of appeal shall be served promptly and in any event within a period of 1 month beginning on the date on which the decision or individual measure concerned was taken.

(3) The CAA may extend the period within which an appeal may be made if it considers that there is good reason for doing so.

4. A person who receives notice of an appeal pursuant to paragraph 2(b) or (c) above shall, within 14 days after receiving such notice, serve on the CAA and the appellant any submission that he may wish to make in connection with the appeal.

5. Within 14 days after the expiry of the period of 14 days referred to in paragraph 4 above the appellant may serve on the CAA a reply to any submission made pursuant to paragraph 4 above and shall within such period serve a copy of any such reply on the person who made that submission.

6. Before deciding an appeal the CAA may ask the appellant or the person who took the decision or individual measure concerned to amplify or explain any point made by him or to answer any question, the answer to which appears to the CAA necessary to enable it to determine the appeal, and the CAA shall give the appellant or, as the case may be, that person an opportunity of replying to such amplification, explanation or answer.

7.—(1) Where the appeal is against a decision made by the managing body of an airport pursuant to regulation 12(7)(a), the CAA may if it thinks fit determine either to dismiss the appeal or to direct that body to vary its decision.

(2) In every other case, the CAA may determine to—

- (a) dismiss the appeal; or
- (b) give such direction in relation to the decision or individual measure concerned as it thinks fit.

8. A person to whom a direction is given by the CAA pursuant to paragraph 7(1) or (2)(b) above shall comply with that direction.

9. The CAA shall notify—

- (a) the appellant;
- (b) the managing body of the airport; and
- (c) in the case of an appeal against a decision or individual measure taken, pursuant to regulation 16, by the public authority or other body controlling the airport, that authority or body

of its determination and of the reasons for it.

10. The CAA shall cause particulars of its determination and of the reasons for it to be published in its Official Record.

11. The failure of any person (other than the appellant in serving notice of appeal on the CAA within the time prescribed in paragraph 3 above) to serve any notice, submission or reply, or copies thereof or to furnish any particulars in the time provided for in this Part of this Schedule or any other procedural irregularity shall not invalidate the decision of the CAA; but the CAA may take such steps as it thinks fit before deciding the appeal to cure the irregularity and shall take such steps if it considers that any person may have been prejudiced.

PART II

APPEALS TO THE SECRETARY OF STATE

1. An appeal to the Secretary of State shall be made by a notice in writing, signed by or on behalf of the appellant, which clearly identifies the determination to which it relates and states the grounds on which the appeal is based and the arguments on which the appellant relies.

2. The appellant shall serve the notice of appeal on:

- (a) the Secretary of State;
- (b) the CAA; and
- (c) where it is not the appellant, the managing body of the airport concerned.

3. The notice of appeal shall be served within a period of 1 month beginning on the date on which, pursuant to these Regulations, the CAA publishes in its Official Record particulars of the determination concerned or, in the case of an appeal against a decision made by the CAA pursuant to regulation 12(7)(b), notice of the decision.

4. On receipt of a notice of appeal served pursuant to paragraph 2 above, the CAA and the managing body of the airport concerned shall, within 14 days after receiving such notice, serve on the Secretary of State, the appellant and each other any submission that they may wish to make in connection with the appeal.

5. Within 14 days after the expiry of the period of 14 days referred to in paragraph 4 above the appellant may serve on the Secretary of State a reply to any submission made pursuant to paragraph 4 above and shall within such period serve a copy of any such reply on the CAA and, where it is not the appellant, the managing body of the airport.

6. Before deciding an appeal the Secretary of State may ask the appellant or any person described in paragraph 2 above to amplify or explain any point made by them or to answer any question, the answer to which appears to the Secretary of State necessary to enable him to determine the appeal, and the Secretary of State shall give the appellant or, as the case may be, any such person an opportunity of replying to such amplification, explanation or answer.

7. In the appeal proceedings no person may submit to the Secretary of State evidence which was not before the CAA when it made the determination.

8. The Secretary of State may if he thinks fit uphold the determination or direct the CAA to reverse or vary its determination.

9. The Secretary of State shall notify the appellant, the CAA and, where it is not the appellant, the managing body of the airport concerned of his decision and of the reasons for it.

10. The CAA shall cause particulars of the Secretary of State's decision and of the reasons for it to be published in its Official Record.

11. The failure of any person (other than the appellant in serving notice of appeal on the Secretary of State within the time prescribed in paragraph 3 above) to serve any notice, submission or reply, or copies thereof or to furnish any particulars in the time provided for in this Part of this Schedule or any other procedural irregularity shall not invalidate the decision of the Secretary of State; but the Secretary of State may take such steps as he thinks fit before deciding the appeal to cure the irregularity and shall take such steps if he considers that any person may have been prejudiced.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive [96/67/EC](#) of 15 October 1996 on access to the groundhandling market at Community airports (O.J. No. L 272, 25.10.96, p.36). The principal provisions are as follows.

1. The managing body of an airport is required to set up a committee of airport users and to organise a consultation relating to the application of the Regulations at least once a year (regulations 6 and 7).

2. The managing body of a category A, category B or category C airport (these categories of airport are defined in regulation 2) is required to ensure that airport users at the airport have the freedom to self-handle; the managing bodies of other airports must also allow their airport users to self-handle, but only in relation to groundhandling services which are not airside services (these services are also defined in regulation 2) (regulation 8(b)).

3. The managing body of a category A or category B airport is required to ensure free access by suppliers of groundhandling services to the third party groundhandling market at the airport (regulation 8(a)).

4. The Civil Aviation Authority ("the CAA") may limit the number of airport users who have the right to self-handle in relation to airside services at an airport to no fewer than two for each category of such services and, where it does so, it is also responsible for choosing the airport users who may exercise that right (regulation 9).

5. The CAA may limit the number of suppliers of airside services at an airport to no fewer than two for each category of such services (regulation 10).

6. With the approval of the Commission of the European Communities, the CAA may further limit the rights to supply groundhandling services and self-handle at an airport where certain constraints at the airport make it impossible to open up the market for the supply of groundhandling

services or, as the case may be, to implement self-handling to the degree provided for in the Regulations (regulation 11).

7. The Regulations lay down a procedure for the selection of suppliers authorised to provide groundhandling services where the CAA has set a limit on the number of such suppliers in accordance with the Regulations (regulation 12).

8. The CAA may reserve for the managing body of an airport or another person the management of centralised infrastructures used for the supply of groundhandling services (regulation 14).

9. Where a supplier of groundhandling services or a self-handling airport user has failed to comply with a rule imposed upon him to ensure the proper functioning of an airport, the CAA may prohibit that person from supplying groundhandling services or self-handling for such period as the CAA thinks fit (regulation 15).

10. The managing bodies of airports and others are required to ensure that suppliers of groundhandling services and self-handling airport users have the necessary access to airport installations (regulation 16).

11. Suppliers of groundhandling services and managing bodies of airports and airport users who supply groundhandling services are required to separate the accounts of their groundhandling activities from the accounts of their other activities (regulation 17).

12. The managing body of an airport may not cause or permit its groundhandling activities to be subsidised from the revenue it derives from its role as airport authority (regulation 17).

13. The CAA is required to appoint an independent examiner to check that the requirements referred to in paragraphs 11 and 12 above are complied with (regulation 18).

14. The Secretary of State has powers to suspend the obligations arising from these Regulations in respect of suppliers of groundhandling services and airport users from third countries (regulation 19).

15. There is a right of appeal to the CAA against certain decisions or individual measures taken by the managing body of an airport and others (regulation 20).

16. There is a right of appeal to the Secretary of State against certain determinations made by the CAA pursuant to the Regulations (regulation 20).