

EXPLANATORY MEMORANDUM TO

THE AIRPORTS SLOT ALLOCATION REGULATIONS 2006

2006 No. 2665

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

The memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

This Statutory Instrument revokes and replaces an earlier SI (No. 1993/1067). It is required by amendments made to EC Regulation 95/93 on common rules for the allocation of slots at Community airports by EC Regulation 793/2004. The extensive changes to the EC Regulation mean that it is simpler and clearer to replace the existing SI.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The main change, which is required by Article 14.5 of the revised EC Regulation, is to introduce a sanctions scheme (paragraphs 14 to 19) to deal with abuse of the slot allocation process. The sanctions scheme is consistent with the Better Regulation and Deregulation agendas; for instance, the Statutory Instrument achieves enforcement by providing for civil penalties rather than criminal offences.

3.2 In the sanctions scheme, enforcement will be achieved through the use of:

- civil penalties on air carriers that abuse the system; and
- administrative directions where civil penalties are not sufficient to achieve compliance.

Penalties may be up to £20,000. Directions may be issued to air carriers to secure their compliance and/or (after appropriate consultation) to airport operators or air traffic service providers. In extreme cases, these might result in the denial of airport facilities or airspace to air carriers who persistently abuse the slot allocation rules.

3.3 The instrument also seeks to minimise regulatory burdens through self-regulation. Airport Coordination Limited (ACL) will run the scheme in consequence of its prior appointment under the EU Regulation as the 'coordinator' for the purpose of allocating slots at the UK's 'coordinated' airports - Heathrow, Gatwick, Stansted and Manchester.

ACL is an independent, not-for-profit, private sector body. It was established in 1992 by a group of major UK airlines, in anticipation of the EU Regulation's requirement to have an independent, neutral, transparent, and non-discriminatory body in charge of allocating slots.

Consultation by the Department for Transport (summarised in paragraph 7 below) identified a large majority of respondents in favour of industry self-regulation, given ACL's independence and its expertise in matters relating to the use of airport slots.

3.4 However, consultation also identified concerns about the need for appropriate safeguards, given that ACL is a private body exercising public functions. To address these concerns, the instrument incorporates (paragraphs 17 to 19) appropriate checks and balances. These are also designed to comply with basic principles of administrative law in the United Kingdom and Article 6 of the European Convention on Human Rights. They include:

- clear limits on the power of the coordinator (so that, for example, the maximum level of penalty is fixed by Ministers under the instrument)
- the coordinator must comply with more detailed enforcement procedures set out in a code to be adopted after consultation with industry and Ministers (who may modify the code)
- the appointment of a third party independent reviewer to whom air carriers may appeal and who has power to overturn ACL's decisions
- ACL must consult on the appointment of the independent reviewer and Ministers must approve the appointment or any premature termination of the appointment of the independent reviewer
- Ministers may require ACL to substitute an alternative independent reviewer in cases of conflict of interest
- judicial review remains available as the ultimate safeguard, notwithstanding that ACL is a private sector body.

4. Legislative Background

4.1 The legislative background is summarised in paragraph 2. By contrast with an EU Directive (for which a Transposition Statement would be required) an EU Regulation generally has direct effect and in this case only requires limited implementation to the extent that obligations are imposed on the United Kingdom as a Member State. The Explanatory Notes indicate the precise relationship between individual paragraphs of the instrument and the Articles of the revised EU Regulation that require implementation.

4.2 Key to understanding the instrument is a change in terminology that has been imposed by the amended EU Regulation. Originally, the slot allocation regime involved the designation of heavily congested airports as ‘fully coordinated’ whilst less busy airports were designated as ‘coordinated’. Each category was required to appoint a ‘coordinator’. To avoid confusion, less busy airports have now been re-named as ‘schedules facilitated’ airports and are required to appoint a ‘schedules facilitator’; whilst heavily congested airports have been re-named as ‘coordinated’ airports and only they are required to appoint a ‘coordinator’.

4.3 A significant issue identified through consultation is that Article 14.5 of the EU Regulation is capable of several different interpretations. It seeks to regulate two different types of prohibited behaviour:

- a) operation of slots at times which are different from those applied for; and
- b) use of slots in different ways from those indicated when they were applied for.

It is not clear from Article 14.5 whether or not in each case it is necessary to demonstrate, before any sanction is imposed, that the relevant behaviour:

- is repeated and intentional and
- causes prejudice to airport operations.

An analysis of the legislative history indicated that it was intended that a sanction can only be imposed in the cases of both categories (a) and (b) if the relevant behaviour is repeated and intentional. By contrast, it appears that it is only necessary to demonstrate prejudice to airport operations in the case of category (b). These conclusions explain the form in which Article 14.5 has been implemented in paragraph 14 of the instrument

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is needed.

7. Policy Background

The policy objective of the EC Regulation is to ensure that, where airport capacity is scarce, the available capacity is used efficiently and distributed in a fair, non-discriminatory and transparent way. The Commission's 2001 Transport White Paper¹ recognised that reform of the Regulation was required, the current stage of which was designed to improve technical aspects to ensure better enforcement and greater opportunities for 'new entrants'. A key element of this is to require Member States to introduce sanctions with the aim of discouraging the repeated and intentional misuse of slots, thereby maximising the effectiveness of the slot allocation system.

The efficient use of slots is in line with Government policy to make the best possible use of existing airport capacity, as set out in the *Future of Air Transport White Paper*.² A sanctions scheme to deal with repeated and intentional slot misuse contributes towards achieving this aim.

In 2005 the Department held a twelve-week consultation to help identify the most appropriate method of implementing the new sanctions scheme. The responses demonstrated broad support for the slot coordinator ACL to administer the sanctions scheme. During 2006, industry was consulted on preliminary drafts of the instrument and the enforcement code. The Department held a seminar at this stage to discuss the drafts with industry representatives. Written responses were also invited, and were received from 15 organisations, who were broadly supportive of the proposals. Nonetheless, numerous detailed changes were made to address a variety of concerns that were raised. The Civil Aviation Authority and National Air Traffic Services Limited were consulted to the extent relevant and changes made in response to comments received from them. ACL has been extensively consulted throughout.

8. Impact

A full Regulatory Impact Assessment is attached to this memorandum.

¹ **White Paper - European transport policy for 2010: time to decide** - European Communities, 2001, p.38 - http://ec.europa.eu/transport/white_paper/documents/doc/lb_com_2001_0370_en.pdf

² **The Future of Air Transport White Paper** (December 2003) – Cm 6046 - http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_031516.pdf

9. Contact

Helen Watson at the Department for Transport (tel. 0207 944 5817 or email helen.watson@dft.gsi.gov.uk) can be contacted in the event of any queries regarding this instrument.

Full Regulatory Impact Assessment

1. Title of proposed measure

The Airports Slot Allocation Regulations 2006, which implement in UK law EC Regulation 95/93³ as amended by 793/2004⁴.

2. Purpose and intended effect

The Airports Slot Allocation Regulations 2006 replace the Regulations of the same name from 1993,⁵ to take account of recent changes to European slots legislation. This Regulatory Impact Assessment (RIA) focuses mainly on the implementation of a sanctions scheme to deal with the repeated and intentional misuse of slots at coordinated UK airports, as this scheme is judged to be the main impact of the regulatory changes. The other changes are mainly technical in nature, but where relevant have also been included in this RIA.

i) Objectives:

The overall objective of EC Regulation 95/93, as amended by 793/2004, is to ensure that where airport capacity is scarce, the available capacity is used efficiently and distributed in a fair, non-discriminatory and transparent way. The amended EC Regulation also introduces enforcement measures and requires Member States to introduce sanctions with the aim of discouraging the repeated and intentional misuse of slots, thereby maximising the effectiveness of the slot allocation system.

The efficient use of slots is in line with Government policy to make the best possible use of existing airport capacity, as set out in the *Future of Air Transport White Paper*.⁶ A sanctions scheme to deal with repeated and intentional slot misuse contributes towards achieving this aim.

ii) Background and Legal Framework

Airport slots at congested airports must be managed for reasons of safety and efficient throughput. The rules governing slot allocation are set out in EC Regulation 95/93 as amended by 793/2004. Under this legislation a Member State may designate an airport as "coordinated". This means that air carriers must be allocated take-off and landing slots in order to operate. Holding a slot means that airspace, runway space, aircraft parking space and terminal capacity for the passengers are available. Currently Gatwick, Heathrow, Manchester and Stansted are designated as "coordinated" airports. At these airports the Member State must ensure that an

³ **Council Regulation (EEC) No 95/93** of 18 January 1993 on common rules for the allocation of slots at Community airports – Official Journal L014, 22/01/1993 Pages 0001-0006

⁴ **Council Regulation (EC) No 793/2004** of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports – Official Journal L138, 30/04/2004 Pages 0050-0060

⁵ **The Airports Slot Allocation Regulations 1993 (No. 1067)**

⁶ **The Future of Air Transport White Paper** (December 2003) – Cm 6046 - http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_031516.pdf

independent "coordinator" is appointed for the purpose of allocating slots. In the UK this is done by Airport Coordination Limited (ACL).

The criteria for allocating slots are derived from EC law, International Air Transport Association (IATA) guidelines and - at some airports - local rules. The most significant criterion is "historic precedence" (sometimes called "grandfather rights", set out in Article 8 of the amended EC Regulation 95/93) which entitles an air carrier to continue using the same slot in the next season, provided it has utilised that slot for at least 80% of the previous one ("Use-it-or-Lose-it Rule"). Remaining slots are pooled. First claim on up to 50% of pool slots goes to "new entrants", as defined under the Regulation.

To address the pressing issue of more efficient use of airport capacity, the Commission announced that a new regulatory framework for slot allocation was required and that to achieve this it would pursue a two-phase approach to revise EC Regulation 95/93. Phase One was completed by the adoption of the amendments in EC Regulation 793/2004, which are covered in this Regulatory Impact Assessment. Phase Two is currently underway and we expect a further proposal from the Commission in early 2007.

EC Regulation 793/2004 entered into force on 30 July 2004 except for Articles 11(2) and 14(5), which entered into force on 30 July 2005. Article 11(2) requires Member States to take appropriate measures to protect the coordinator from claims for damages save in cases of gross negligence or wilful misconduct; Article 14(5) requires Member States to ensure that effective, proportionate and dissuasive sanctions are available to deal with repeated and intentional misuse of slots, in order to encourage greater compliance with the Regulation.

iii) Rationale for Government intervention

The driver for action is the EC Regulation, which requires the Member State to bring forward measures to apply sanctions to air carriers misusing their slots. There is no sanctioning system currently in place. Government needs to intervene because only it can update the Statutory Instrument required to implement the European legislation in UK law.

Given the constrained nature of the UK's coordinated airports, especially Heathrow and Gatwick, the Government believes that it is important to make best use of the available capacity and to minimise the level of congestion and delays which affect all carriers. This means making optimum use of slots, and therefore addressing misuse of slots by air carriers, even where this amounts to a very small proportion of total slot operations.

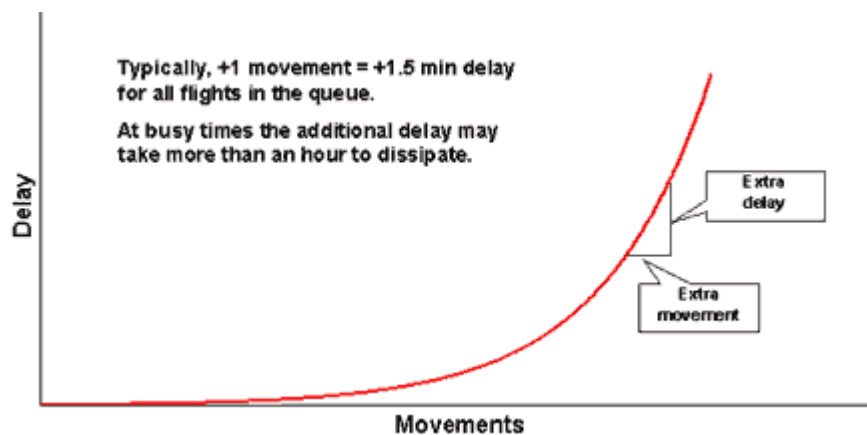
The table below gives an indication of the level of slot misuse at the four coordinated UK airports in the Summer 2005 season. This table does not show where such slot misuse is repeated and intentional. It shows data for two types of slot misuse: operating "off-slot" (at a time different from the allocated slot) and operating without a slot.

Coordinated airport	Total no. series of slots in Summer 2005 season	No. of series operated significantly off slot in Summer 2005 season	Seasonal operations without a slot
LHR	9438	93	34
LGW	6413	198	489
STN	4091	17	1646
MAN	5640	149	180

Source: ACL

Figure 1 below illustrates that, during busy hours, even one additional movement can significantly increase the level of delays for other air carriers. At congested airports slot misuse can therefore cause disruption even when such misuse is only a very small proportion of total slot operations.

Figure 1:



Source: ACL

A study carried out for Eurocontrol's Performance Review Commission⁷ provides a useful indication of the potential costs of delay to air carriers. This includes the costs of delay to passengers and crew, and the cost of fuel burn. The study outlines how the cost per minute of delay will vary depending on the size of the aircraft, and on whether the aircraft is delayed in the air before landing or taxiing for take-off. The study also argues that delay costs *per minute* are substantially higher for delays lasting over 15 minutes, and gives a network average cost of 72 euros per minute for such delays. A graph on p.13 of the study summarises the costs.

⁷ **Evaluating the true cost to airlines of one minute of airborne or ground delay** - study carried out by University of Westminster for Eurocontrol's performance review commission, May 2004 - http://www.eurocontrol.int/prc/gallery/content/public/Docs/cost_of_delay.pdf

Looking at fuel costs alone, for each minute that a Boeing 747 spends in airborne delays it expends 138kg of fuel. With fuel costs approximately \$615/metric tonne (as at June 2006), this puts the fuel cost of delays at about \$84/minute.⁸

iv) Risks

There is a risk that UK sanctions imposed on foreign aircraft could provoke retaliatory action abroad against UK carriers. We have sought to mitigate this risk by ensuring the UK scheme is non-discriminatory, transparent, proportionate and establishes the necessary checks and balances. This includes ensuring that the scheme will only deal with repeated and intentional slot misuse, and will not penalise air carriers for normal operational variations to the schedule due to events beyond their control. Also, air carriers will have the right of appeal to an independent reviewer, who will have the power to overturn the coordinator's decision.

There is also a risk that air carriers misusing slots will accept financial sanctions as a 'cost of business' and may not be dissuaded from their actions. This has been addressed by setting a high 'ceiling' on the level of penalty that can be levied and by giving the coordinator the power to issue 'directions' to secure compliance. It is intended that these directions in exceptional circumstances to prevent ongoing misuse by such air carriers.

Clear rules and guidelines on the operation of the sanctions scheme have been developed and consulted upon, and will be communicated to all carriers operating from/to UK coordinated airports.

3. Consultation

There have been three phases of consultation on the introduction of slots sanctions:

- initial informal consultation with other Government Departments; external bodies including CAA, OFT and aviation stakeholders
- in line with Cabinet Office guidance, a 12-week formal consultation was undertaken, beginning on 14 July 2005.⁹ This addressed the overall principles of the sanctions scheme. The consultation also invited comments on a partial Regulatory Impact Assessment, which aimed to assess the impacts of the policy options in terms of costs, benefits and risks. A summary of the 22 written responses to this consultation is available on the Department's website.¹⁰ On the basis of these responses, ACL was invited to assist the Department in designing and implementing the slots sanctions scheme
- A further consultation on the draft Statutory Instrument (SI), and on the draft documents that have been developed into the 'enforcement code' required by

⁸ Source of data - US Government , Energy Information Administration (eia)

⁹ **Consultation on the introduction of sanctions for misuse of airport slots:**
http://www.dft.gov.uk/stellent/groups/dft_control/documents/contentservertemplate/dft_index.hcst?n=14064&l=2

¹⁰ **Report on the consultation on introducing sanctions for misuse of airport slots:**
http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_610904-02.hcsp

the SI, was undertaken by DfT and ACL in April/May 2006. This included a seminar to present the draft scheme to the aviation industry on 27 April. 14 written responses were received to this consultation

The consultation responses have played a key role in highlighting and resolving potential problems with the sanctions scheme, and more generally in helping to formulate Government policy on the scheme.

4. Options

The options identified in the partial RIA as ways to achieve the policy objective were:

1. Do nothing - ignore Article 14.5 of EC Regulation 793/2004 and do not introduce a system of sanctions to tackle misuse of slots.
2. Support a system of administrative sanctions to complement those that already exist at some airports in the form of local rules.
3. Introduce a combination of financial and administrative sanctions.
4. Go beyond the scope of Article 14.5 of the Regulation and introduce sanctions to tackle all slot misuse in a wider context, i.e. not just where it is "repeated and intentional."

5. Costs and Benefits

Sectors and groups affected

The aviation industry, primarily the airport coordinator, air carriers operating at the UK's coordinated airports (Heathrow, Gatwick, Stansted and Manchester), and the operators of those airports would be affected by this policy.

The scheme should benefit passengers by reducing delays and congestion at coordinated airports. Air passengers may be subject to very marginally higher fares if both airports and air carriers decide to pass on the costs of running the scheme. However, given that these costs are estimated to be no greater than £100k/year, any fare increase is expected to be negligible when distributed across the large number of air carriers at coordinated airports and the much larger number of passengers.

Consumers and citizens more generally should not be directly affected, nor should there be any impact on voluntary organisations and charities. This policy proposal should not have any race equality impacts.

Analysis of costs and benefits

Option 1 - do nothing

The benefits of doing nothing are that there would be no implementation costs or additional regulatory burden. It would limit the concerns of the air carrier industry about over-regulation by Government, and fears of retaliatory action by other countries.

In terms of costs, this option contravenes EU legislation and could lead to infraction proceedings against the UK Government by the Commission. It also means the misuse of slots at coordinated airports may continue to be a problem. The resulting congestion and delays would impose costs on airport operators and other air carriers affected, as there is no mechanism to enforce compliance beyond the local rules in place at Gatwick and Manchester airports. Such slot misuse would be likely to increase as sanctions systems were put in place in other EU Member States, causing slot misuse to 'migrate' to the UK.

Some airlines reported that when financial sanctions were introduced in a certain country for airlines misusing their slots, these airlines chose to operate off-slot at Gatwick and Manchester, where no effective sanctions were in place, rather than risk incurring fines in the country in question.

Option 2 - administrative sanctions

The benefits of option 2 are that at Gatwick airport some local rules are already in place so there are some examples to learn from. This option could probably cause some reduction in slot misuse at airports where there are currently no local rules, resulting in reduced congestion and delays. It nonetheless avoids the use of financial penalties, which are less popular with some air carriers and potentially more likely to cause retaliatory action abroad.

The costs of Option 2 are that there is a lack of evidence as to the effectiveness of such local rules so there may not be much improvement in performance. Enforcing administrative sanctions would also require co-operation between the coordinator, the airport and the air traffic manager (depending on the sanction in question), which could increase the complexity and resources involved in implementing the sanctions effectively. Further, it would be difficult for the coordinator to impose administrative sanctions that were proportionate to the level of misuse - this can be done far more easily with financial sanctions.

There would also be a resource and financial cost in terms of implementing and monitoring a sanctioning system and an appropriate appeal process - this cost applies to Options 2-4. The cost of administering the scheme would be paid for in advance by the coordinated airports. This is estimated to be about £100k/year. It is possible that some or all of the cost might be passed on to air carriers and passengers via airport charges and air fares.

Should airlines appeal to the independent reviewer, or subsequently to the Courts, there would be additional legal and administrative costs associated with this; it is not possible to estimate these costs at this stage.

The **appointment of the coordinator** as the administrator of the sanctions scheme, which applies to all of options 2-4, will ensure that the sanctions scheme is run by an independent, transparent, and non-discriminatory body. A large majority of responses to the consultation supported the coordinator's appointment to operate the sanctions scheme.

The benefits of the coordinator managing the UK sanctions scheme is that the scheme will be perceived to be fair, and will therefore reduce the likelihood of legal challenge

and of retaliatory action abroad. The coordinator also has considerable expertise in managing slots, and is therefore best placed to ensure that sanctions are imposed only where appropriate, and that the administrative costs of implementing the EC Regulation are as low as possible.

The scheme should impose no additional burden on the coordinator, since the costs of running the scheme are to be met by coordinated airports, which will be reimbursed by any revenue from fines.

Option 3 - financial and administrative sanctions

The benefits of option 3 over option 2 are that a system which offers a combination of financial and administrative sanctions enables the sanction/fine imposed to be proportionate to the severity of the misuse identified. Enabling recourse to financial sanctions will provide more leverage to address slot misuse and should therefore be more successful in changing air carriers' behaviour. As pressure on slots increases, the benefits of being able to impose these sanctions will become more evident and the need for them more pressing. Creating dissuasive sanctions should influence slot use in a positive way.

Any revenue from fines would also go towards equalling and exceeding the £100k charges paid by the airports towards the running of the sanctions scheme. If fines are imposed, these will therefore reduce the impact on the aviation industry as a whole, but increase the impact on those air carriers that pay the fines.

Revenue from fines over and above the administrative costs of the scheme will accrue to the Treasury. This is to ensure that there is no financial impact on the aviation industry - either positive or negative - apart from on those air carriers paying the fines. Recycling additional revenue into the aviation industry could have the potential to create conflicting incentives for more/fewer sanctions to be imposed. The aim of the scheme is to dissuade slot misuse, not to raise revenue.

The additional costs of Option 3 over Option 2 are that it places a further regulatory burden on the coordinator in terms of collecting, handling and accounting for the money from fines. The use of financial penalties may be more unpopular with air carriers as it may affect their profitability. It is also marginally more likely to cause retaliatory action from other countries.

Option 4 - go beyond scope of Article 14.5

The benefits of this option are that it may provide the most effective outcome in terms of addressing the general problem of slot misuse, thereby enhancing the use of existing airport capacity, by seeking to address more types of slot misuse.

The costs are that this option would constitute "gold-plating" the Regulation and would be a disproportionate extension of the legal framework required by Article 14.5, thereby increasing the likelihood of challenge by the Commission, or of judicial review. The independent reviewer dispute resolution mechanism would become overused, and the administrative costs of the coordinator running the scheme would increase, given the greater number of cases of misuse they would be attempting to deal with.

This option would also impose additional and unacceptable burdens on air carriers whose behaviour may not be "repeated and intentional", especially in instances where air carriers misuse slots for operational reasons outside their control.

The costs of this option to Government and the aviation industry would clearly outweigh the benefits, and the final sanctions scheme therefore seeks to address slot misuse only where it is repeated and intentional, and not where it is beyond the reasonable control of the air carrier in question.

Cost/Benefit Impacts of other elements of the Airports Slot Allocation Regulations 2006

Regulation 8 - Approval of local rules:

The Airports Slot Allocation Regulations 2006 give relevant airport operators the power to approve local rules. The benefit is that airports will have control over the way their infrastructure is used. They will also be responsible for ensuring that any rules do not affect the independent status of the coordinator, comply with Community law and aim at improving the efficient use of airport capacity. There would not appear to be any significant costs: local rules are decided by the coordination committee, on which airports only have a minor voice. It would therefore not be possible for airports to create rules that air carriers do not support.

Regulation 12 - limited liability:

This clause grants the coordinator limited liability in relation to its functions under the EC Regulation and the Statutory Instrument. This means that it would only be liable in the case of wilful misconduct or gross negligence. The benefit of this option is that the coordinator is protected as long as it acts in good faith and takes reasonable care. Whilst the EC Regulation only requires that this protection be provided to coordinators, it is consistent with the purpose of the legislation to extend protection to other parties involved in securing compliance by air carriers and against whom legal action might be taken. There are not expected to be any significant costs.

6. Small firms' impact test

We do not believe this policy is likely to have a significant impact on small businesses. The financial sanctions are intended to be dissuasive to influence an improvement in the behaviour of a minority of air carriers that misuse their slots. This should be beneficial to the efficiency of the slot allocation system as a whole.

7. Competition assessment

This section judges the impact of the sanctions scheme on competition in the aviation sector.

Generally the enforcement measures in the new Regulation should ensure greater levels of EU-wide compliance with the requirements of the coordinator and the slot Regulation, which should improve the effectiveness of the slot allocation system, thereby encouraging competition. The sanctions scheme should also help prevent potential anti-competitive measures taken by some air carriers.

In responding to the consultation, some long-haul and charter air carriers expressed concern that they would be unduly affected by sanctions, as (in particular) their operations were more likely to be 'off-slot'. The scheme has been designed as a dissuasive enforcement mechanism to prevent only repeated and intentional misuse of slots. The scheme is not designed to penalise unintentional (force majeure) misuse, or normal operational variations to the schedule. Those air carriers that do not engage in repeated and intentional slot misuse should benefit from reduced congestion.

As other aspects of the Statutory Instrument are largely technical in nature, we do not expect them to make a significant difference to competition in this sector. These aspects should not affect the market share of any firm in this sector, should not affect the market structure, lead to higher set-up costs or ongoing costs for new entrants or restrict the ability of firms to choose the price, quality, range or location of their products.

8. Environmental Impacts

If sanctions improve slot use there should be a positive impact on airport operations and in reducing delays. It is reasonable to assume from this that carriers will spend less time waiting in queues to be taxied onto the runway and in the air waiting to land.

The introduction of an effective sanctioning mechanism to address slot misuse is therefore likely to have a small positive impact on the environment by reducing emissions of greenhouse gases and local air pollutants.

The scheme will also facilitate sanctions for operating at night without an allocated night slot or for using a noisier plane than permitted. These may bring about a reduction in night noise.

The sanctions scheme is also one of many measures aimed at making the best use of existing capacity, which helps mitigate some of aviation's environmental impacts.

9. Enforcement and sanctions, monitoring and review

The Statutory Instrument provides for the introduction of dissuasive sanctions to deal with repeated and intentional slot misuse at coordinated airports. It nominates the airport coordinator as the body responsible for enforcing the sanctions scheme. In the event of any dispute over sanctions, air carriers will have recourse to an independent reviewer, and ultimately to the Court by way of judicial review.

Plans for the review of the sanctions scheme and the SI as a whole are set out in Section 11 of this RIA.

10. Implementation and delivery plan

The Department will use a Statutory Instrument (the Airports Slot Allocation Regulations 2006 or 'the SI') to give the airport coordinator powers to implement sanctions to deal with repeated and intentional slot misuse. The coordinator will also be granted limited liability, in accordance with Article 11.2 of the amended EC

Regulation. The SI also implements in UK law a range of other technical measures to do with slot allocation.

The Department aims to lay the SI before Parliament in October. At this point, copies of the SI, this RIA and the sanctions scheme enforcement code will be circulated to stakeholders. Information about the scheme will also be available on ACL's website.

The SI will take effect on 1 January 2007, which provides a **12-week preparation period** to allow the aviation industry to familiarise itself with the sanctions scheme.

11. Post Implementation Review

It is intended that the sanctions scheme administrator (the coordinator) should carry out a review of the sanctions scheme in April 2008 and report to the Secretary of State. This review would take into account recommendations from the Slots Performance Committee at the relevant airports, the independent reviewer, and the relevant airport operators. It will also include any proposed changes to the enforcement code.

After the first review, it is intended that the coordinator will review the sanctions scheme every two years.

We understand that the European Commission intends to issue a proposal for a review of the EC Slots Regulation in early 2007. If any material changes arise from this, the Airports Slot Allocation Regulations may also need to be reviewed and amended.

12. Summary and recommendations

The Minister for Aviation has agreed to Option 3, which allows the coordinator to use a combination of financial and administrative sanctions to dissuade slot misuse without going beyond the scope of the EC Regulation. Option 1 (doing nothing) was rejected because Government is obliged by European law to implement the sanctions scheme, and could face infraction proceedings if it failed to act. Option 2 only involves administrative sanctions - with these it is difficult for sanctions to be proportionate to the misuse. Finally, Option 4 could give rise to judicial review, or be challenged by the Commission, as it involves going beyond the scope of the EC Regulation.

The table below summarises the costs and benefits of each option:

	Costs	Benefits
Option 1	<p>Risk of infraction proceedings from European Commission</p> <p>Continued misuse of slots at UK coordinated airports</p> <p>Increased slot misuse as other countries implement sanction schemes</p>	<p>No implementation costs or regulatory burden on aviation industry</p> <p>No retaliatory action from other countries</p>
Option 2	<p>Lack of evidence that administrative sanctions would dissuade slot misuse.</p> <p>Requires co-ordination between various airport bodies</p> <p>Difficulty in ensuring proportionate sanctions</p> <p>Resource cost of implementing scheme and appeals process</p>	<p>Existing local rules provide best practice for administrative sanctions</p> <p>Some slot misuse eradicated</p>
Option 3	<p>Resource burden of collecting, handling and accounting for revenue</p> <p>May affect profitability of air carriers that misuse slots</p> <p>Possibility that financial sanctions may cause retaliatory reaction abroad</p>	<p>Combination of financial and administrative sanctions allow proportionate treatment of slot misuse</p> <p>More leverage for coordinators to address slot misuse and therefore reduce congestion/delays and increase airport capacity</p>
Option 4	<p>Outside scope of EC Regulation - risk of judicial review or Commission infraction proceedings</p> <p>Disproportionate regulatory burden</p>	<p>Most comprehensive way of addressing slot misuse</p>

13. Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the appropriate Minister:

G Merron

Date: 5th October 2006

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