

**EXPLANATORY MEMORANDUM TO**  
**THE AIRPORT CHARGES REGULATIONS 2011**  
**2011 No. 2491**

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

**2. Purpose of the instrument**

2.1 This instrument implements in the United Kingdom Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (“the Directive”).

2.2 The Directive introduces common principles to ensure transparency and consultation in the levying of charges by the operators of major airports on their airline customers. It has effect at all airports with a throughput of over five million passengers per annum. It requires Member States to put in place a compulsory procedure whereby the operators of such airports undertake regular consultation with airport users (i.e. airlines) on the system and level of airport charges and the quality of service provided.

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

3.1 None.

**4. Legislative Context**

4.1 The requirements relating to consultation and transparency in the setting of airport charges are new to UK law, but are closely related to legislation for the economic regulation of airports. For airports in Great Britain, economic regulation is constituted by measures contained in Part IV of the Airports Act 1986 (“the 1986 Act”). The regulation of airport charges by the setting of a price cap takes place only at airports designated for that purpose by the Secretary of State under section 40 of the 1986 Act. The policy is to designate only those airports with substantial market power, and at present the major London airports of Heathrow, Gatwick and Stansted are so designated.

4.2 Similar arrangements are in place in Northern Ireland under the Airports (Northern Ireland) Order 1994 (“the 1994 Order”). No airports in Northern Ireland are currently designated.

4.3 The instrument makes a number of amendments to Part IV of the 1986 Act in respect of the procedure for designating an airport for price cap regulation. Similar amendments are made to the 1994 Order in respect of airports in Northern Ireland. The

purpose of these amendments is to ensure that the system for the economic regulation of airports in the United Kingdom is compliant with the procedure set out in Article 6(5)(b) of the Airport Charges Directive. This procedure is an alternative to the more interventionist form of regulation envisaged by articles 6(3) and 6(4) of the Directive. These would require intervention by an independent supervisory authority in the event of a disagreement between an airport operator and airlines over the level or system of charges at any airport which is subject to the Directive.

4.5 The Government does not support such an interventionist approach to the regulation of airport charges and has not therefore implemented Articles 6(3) and 6(4).

4.6 A transposition note is annexed to this Memorandum.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Minister of State at the Department for Transport, the Rt Hon Theresa Villiers MP, has made the following statement regarding Human Rights:

In my view the provisions of the Airport Charges Regulations 2011 are compatible with the Convention rights.

## **7. Policy background**

7.1 The guiding principle of transposing the Directive has been to not go beyond what is strictly required to implement its requirements. Wherever possible, therefore, the relevant text of the Directive has been copied out into UK legislation. In some cases, however, this has not been desirable, either because the existing legislation does not lend itself to direct copy out or because the drafting of the Directive requires some clarification. In these cases the approach has been to seek to make the minimum legislative change necessary to implement the requirements of the Directive.

7.2 The instrument defines “airport charges” in a form closely related to its definition in section 36(1)(a) of the Airports Act 1986. This is intended to ensure consistency for airlines and airport operators with the existing system of economic regulation, and provide clarity on the scope of the charges on which an airport operator must consult its airline users.

7.3 Part 2 of the instrument defines a regulated airport for the purpose of setting airport charges and imposes reporting requirements on airport operators. Any airport with a throughput of greater than five million passengers in the year but one preceding the current year will be a regulated airport. In practice, this means that an airport of that size in a given year must consult its users (i.e. airlines) during the following year about

charges which come into effect the year after that. On the basis of 2010 passenger figures, ten UK airports will be regulated in 2012.

7.4 Part 3 of the instrument establishes the timetable and procedure for the consultation which must be undertaken by an operator of a regulated airport with its customer airlines. It specifies the information which the operator must provide to airlines about its proposed charges and the associated quality of service it intends to provide, and the information that airlines must provide in terms of their forecast traffic and requirements at the airport concerned. In Part 4, the instrument requires an airport operator to have regard to any representations made by its airport users when making changes to the system or level of its charges or to the associated quality of services it provides.

7.5 The instrument allows for exceptions (in whole or in part) from the obligations to provide information and to consult on airport charges and services where a multi-annual agreement or service level agreement has been reached between an airport operator and individual airlines. Such agreements must take account of the system or level of airport charges and the quality of service to be provided in return. The obligation to provide information and consult may also be set aside in a particular year if this was agreed by the airport operator and all airport users in the preceding year. These measures are consistent with the requirements of the Directive and reflect the practices already in place at many UK airports. They provide an opportunity to reduce the costs which would be imposed on the industry through full observance of the requirements to provide information and to consult on an annual basis.

7.6 The instrument prohibits airport operators from setting airports charges which are discriminatory as between airport users. It does however permit them to set charges which differentiate between users on the basis of relevant, objective and transparent criteria.

7.7 The instrument does not transpose Articles 4 or 5 of the Directive. These are optional provisions which would, respectively, permit the managing body of an airport network to introduce a common and transparent charging system to cover that network; and to apply a common and transparent charging system at airports serving the same city or conurbation. The Government does not believe that these measures are necessary or appropriate in the United Kingdom.

7.8 The Secretary of State has designated the Civil Aviation Authority (CAA) as the UK's independent supervisory authority for the purposes of the Regulations, which reflects its enforcement functions under the instrument. The instrument empowers the CAA to impose a penalty to a maximum of £5000 on an airport user who fails to provide the specified information in response to a consultation carried out by an airport operator (see Part 5). The CAA may also serve a compliance order on an airport operator which has failed to comply with any obligation imposed upon it by the Regulations (see Part 6). Such an obligation is also a duty owed by an airport operator to any person who may be

affected by its contravention, and any breach of that duty may be actionable in the event of loss or damage.

7.9 The Government believes that these measures will be effective in ensuring compliance with the requirements of the instrument and will be exercised in a manner proportionate to the breach for which they are imposed.

7.10 Part 7 of the instrument amends Part IV of the Airports Act 1986 in order to modify the procedure for designating an airport for price cap regulation. As explained in paragraphs 4.1 to 4.5 above, the modified designation procedure is a permitted alternative to a transposition in which the CAA would be required to take decisions on the modification of charges at any regulated airport in the event of a disagreement between its operator and users.

7.11 The amendments to the 1986 Act therefore modify the designation procedure to ensure that it is consistent with Article 6(5)(b) of the Airport Charges Directive. The principal change from the existing system of designation is that it will be for the CAA to examine whether an airport operator in relation to a regulated airport has, or is likely to acquire, substantial market power. The CAA may carry out such an examination whenever it considers appropriate, or on request from the Secretary of State or another person appearing to the CAA to have sufficient interest in the examination. It will be for the Secretary of State to reach a decision on the designation of an airport on the basis of the market power examination undertaken by the CAA.

7.12 The instrument makes similar amendments to the 1994 Order in respect of the designation of airports in Northern Ireland.

7.13 The Directive states that the independent supervisory authority of a Member State shall not operate or control any airports. In practice, the CAA has had no such responsibilities for some years, but the instrument makes a number of amendments to primary legislation (set out in Schedule 2) which prohibit it from having such a role.

7.14 The instrument also contains provisions relating to the duties of the CAA as the regulatory body, the furnishing of information to the CAA and the service of documents by it, the publication of an annual report concerning the exercise of its functions under the regulations, and restrictions on the disclosure of information.

- Consolidation

7.15 The Government intends to make wider-ranging changes to the economic regulation of airports in Great Britain in order to improve the performance of airports to benefit passengers wherever possible by promoting the development of competition. It proposes to introduce primary legislation to this effect in 2012. This will replace the regime in Part IV of the Airports Act 1986. The amendments to the 1986 Act effected by Part 7 of the instrument are therefore a temporary measure to ensure the proportionate implementation of the Airports Charges Directive. They will be superseded by measures in the forthcoming Bill.

## **8. Consultation outcome**

8.1 In view of the specialised and technical nature of the subject matter and its limited interest to the general public, the Department for Transport carried out an informal, targeted consultation with stakeholders in the air transport industry from 21 April 2011 until 10 June 2011. Twelve responses were received, from airport operators, airlines and the devolved administrations. The responses were generally supportive of the Government's approach to implementation of the Directive, although some responses raised concerns about points of detail; the main issues raised were as follows.

8.2 Three responses sought more clarity on what constituted excepted charges for the purposes of the regulations. Confusion on this issue appears to have arisen from ambiguities in the consultation document; the definition in the Regulations appears clear.

8.3 The consultation sought views on whether an airport should fall within the scope of the regulations on the basis of a single year's passenger figures or an average based on performance over a three-year period. Six responses favoured the former approach and three the latter. The Government has retained its proposed single-year qualifying period.

8.4 There was general support for the proposed process for the provision of information and consultation prior to setting charges, although many responses raised points of detail about its practical application. These included the need to consult all airport users, however small, and the extent to which the consultation requirements could be met by airport operators intending to introduce revised charges early in 2012, given the limited time available. It will be for the CAA, as the designated independent supervisory authority, to reach a view on compatibility in the first instance. It has already engaged with individual airport operators and airlines about their particular concerns, and the process of engagement will inform the detailed guidance which the CAA is preparing. Several responses requested greater clarity on the grounds on which an airport operator might differentiate between users in setting charges. The Government accepted that this was necessary and has amended Regulation 14 of the instrument accordingly.

8.5 There was little comment on the proposed amendments to the process of designating airports for price cap regulation. One response welcomed the decision not to implement Articles 6(3) and 6(4) of the Directive, which would have imposed a burden on the industry. Another response was concerned that the failure to do so effectively removed an airline's right of appeal against airport charges.

8.6 The majority of responses were content with the enforcement regime, although individual responses questioned its value and the deterrent value in respect of airlines of the maximum level of fine. Government policy is, however, not to impose higher fines for regulatory offences of this nature.

8.7 All responses which commented on the issue were content with the appointment of the CAA as supervisory authority and with its roles and responsibilities.

8.8 Three responses sought stronger measures to protect commercially confidential information. The Government believes that the application of penalties in existing aviation legislation pertaining to the unauthorised disclosure of information will provide an adequate deterrent (see Schedule 3).

## **9. Guidance**

9.1 The Civil Aviation Authority, as the independent supervisory authority for the purposes of the instrument, published in December 2010 its emerging thinking on the manner in which airport operators and airlines should approach its requirements. It is continuing to engage with individual airport operators and airlines on the detailed application of the Regulations, and is working closely with the industry to develop detailed guidance, which will be published later in 2011.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is limited to the additional costs imposed on airport operators and airlines, either directly or through additional regulatory charges imposed by the CAA. These have four elements:-

- costs arising from the CAA conducting market power investigations to determine whether an airport is subject to effective competition;
- costs for the CAA in developing guidance on procedures and policies to work with industry to help assure compliance;
- costs for the CAA in monitoring industry to ensure correct compliance with the Regulations, taking enforcement action and publishing an annual report on its activities; and
- costs for airport operators and airlines in carrying out the specified consultation process prior to the setting of airport charges.

10.2 Total costs are estimated at £1.635 million per year. This figure is dependent upon fluctuations in the number of airports which are subject to regulation, and the number of market power investigations undertaken by the CAA.

10.3 The impact on the public sector is the additional costs imposed on the CAA through performing the additional functions placed upon it by the instrument. These are estimated at £80,000 per annum for the first three years, and £36-39,000 per annum thereafter. As the CAA is funded by the regulatory charges it levies on industry for the performance of its functions, all of these costs will in practice fall indirectly to the private sector.

10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 In practice, however, the impact of the requirements on firms employing up to 20 people will be minimal. There are no airport operators or airlines of this size. There may be some small businesses operating aircraft at airports within the scope of the Directive, but the impact of any requirements imposed on them in terms of responding to an airport operator's consultation may be regarded as *de minimis*.

## **12. Monitoring & review**

12.1 The policy objective is to ensure effective compliance with the requirements of the Airport Charges Directive through the use of proportionate and targeted regulations. The Government will expect to see full compliance by the operators of regulated airports with the requirements to undertake consultation with the users of those airports and the timely publication of their airport charges; and a very low incidence of enforcement action by the Civil Aviation Authority against airport users for failing to provide the specified information to airport operators.

12.2 Regulation 2 of the instrument requires the Secretary of State to carry out a review of its provisions within five years of its coming into force, and thereafter at five-year intervals. Reports of these reviews will be published on the Department for Transport's website at [www.dft.gov.uk](http://www.dft.gov.uk).

## **13. Contact**

Phil Cotterell at the Department for Transport Tel: 020 7944 8706 or email: [phil.cotterell@dft.gsi.gov.uk](mailto:phil.cotterell@dft.gsi.gov.uk) can answer any queries regarding the instrument.

## TRANSPOSITION NOTE

This Transposition Note, in tabular form, explains how the Airport Charges Regulations 2011 transpose Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, commonly known as “the Airport Charges Directive”.

The general approach to transposing the Directive has been to not go beyond what is strictly required to implement its requirements. Wherever possible, therefore, the relevant text of the Directive has been copied out into UK legislation. In some cases, however, this has not been desirable, either to ensure consistency with existing UK legislation or because the drafting of the Directive requires some clarification. In these cases the approach has been to seek to make the minimum legislative change necessary to implement the requirements of the Directive. This approach has been applied in particular in Parts 7 and 8 of the Regulations, which establish a mechanism for designating an airport for the purpose of price cap regulation.

## TRANSPOSITION TABLE

### **Implementation of the Airport Charges Directive (2009/12/EC) by reference to the Airport Charges Regulations 2011**

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                       | <b>Implementation in the Regulations</b>                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Article 1 - Scope</b> <p>Paragraph 2. This Directive shall apply to any airport located in a territory subject to the Treaty and open to commercial traffic whose annual traffic is over 5 million passenger movements and to the airport with the highest passenger movement in each Member State.</p> | See definition of “regulated airport” in Regulation 4(1) of the Regulations.                          |
| Paragraph 3. Member States shall publish a list of the airports on their territory to which this Directive applies. This list shall be based on data from the Commission (EUROSTAT) and shall be updated                                                                                                   | See Regulations 6(1) to (3). Consistency with Eurostat data is promoted by virtue of Regulation 6(4). |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| annually.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                           |
| Paragraph 4. This Directive shall not apply to the charges collected for the remuneration of en route and terminal air navigation services in accordance with Regulation (EC) No 1794/2006, or to charges collected for the remuneration of ground-handling services, referred to in the Annex to Directive 96/97/EC, or to the charges levied for the funding of assistance to disabled passengers and passenger with reduced mobility referred to in Regulation (EC) No 1107/2006.  | See the definition of “excepted charges” in Regulation 3(2) and the revision of the definition of “airport charges” in section 36 of the Airports Act 1986 by virtue of Regulation 23(2) (see Regulation 25(2) for the equivalent change in respect of Northern Ireland). |
| Paragraph 5. The Directive shall be without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body located in its territory. This may include economic oversight measures, such as the approval of charging systems and/or the level of charges including incentive-based charging methods or price cap regulation. | This paragraph does not require direct transposition.                                                                                                                                                                                                                     |
| <b>Article 2 - Definitions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                           |
| “airport”                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | See Regulation 3(1).                                                                                                                                                                                                                                                      |
| “airport charges”                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | See Regulation 3(1).                                                                                                                                                                                                                                                      |
| “airport user”                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | See Regulation 3(1).                                                                                                                                                                                                                                                      |
| “airport managing body”                                                                                                                                                                                                                                                                                                                                                                                                                                                               | See Regulation 3(1). The standard domestic definition of “airport operator” has been used in the interests of consistency with domestic legislation: this term encompasses “airport managing body”.                                                                       |
| “airport network”                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | This concept is not needed as no use is being                                                                                                                                                                                                                             |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                    | <b>Implementation in the Regulations</b>                    |
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|                                                                                                                                                                                                                                                                                                                                                                                                         | made of Article 4 of the Directive.                         |
| <p><b>Article 3 - Non-discrimination</b></p> <p>Member States shall ensure that airport charges do not discriminate among airport users, in accordance with Community law. This does not prevent the modulation of airport charges for issues of public and general interest, including environmental issues. The criteria used for such a modulation shall be relevant, objective and transparent.</p> | See Regulation 14 (Basis of setting airport charges)        |
| <p><b>Article 4 - Airport network</b></p> <p>Member States may allow the airport managing body of an airport network to introduce a common and transparent airport charging system to cover the airport network.</p>                                                                                                                                                                                    | Optional transposition that the UK proposes not to take up. |
| <p><b>Article 5 - Common charging systems</b></p> <p>After having informed the Commission and in accordance with Community law, Member States may allow an airport managing body to apply a common and transparent charging system at airports serving the same city or conurbation, provided that each airport fully complies with the requirements on transparency set out in Article 7.</p>          | Optional transposition that the UK proposes not to take up. |
| <p><b>Article 6 (1) - Consultation</b></p> <p>Member States shall ensure that a compulsory procedure for regular consultation between the airport managing body and airport users or the representatives or associations of airport users is established with respect to the</p>                                                                                                                        | See Regulation 8.                                           |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                           | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| operation of the system of airport charges, the level of airport charges and, as appropriate, the quality of service provided.                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                           |
| Such consultation shall take place at least once a year, unless agreed otherwise in the latest consultation.                                                                                                                                                                                                                                   | <p>The requirement to consult at least once a year is in Regulation 8(3). This must follow the information gathering exercise under Regulations 7.</p> <p>The meaning of “unless agreed otherwise” is understood to mean “unless agreed otherwise in a multi-annual agreement”. See Regulation 11 which disapplies obligations under Part 3 in certain circumstances.</p> |
| Where a multi-annual agreement between the airport managing body and the airport users exists, the consultations shall take place as foreseen in such agreement.                                                                                                                                                                               | See Regulation 11.                                                                                                                                                                                                                                                                                                                                                        |
| Member States shall retain the right to request more frequent consultations.                                                                                                                                                                                                                                                                   | See Regulation 11(3).                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>Article 6(2) – Timetable for decision</b></p> <p>Member States shall ensure that, wherever possible, changes to the system or the level of airport charges are made in agreement between the airport managing body and the airport users.</p>                                                                                            | See Part 3 generally and in particular the consultation obligations.                                                                                                                                                                                                                                                                                                      |
| To that end, the airport managing body shall submit any proposal to modify the system or the level of airport charges to the airport users no later than four months before they enter into force, together with the reasons for the proposed changes, unless there are exceptional circumstances which need to be justified to airport users. | <p>Regulation 9(1) provides the obligation to give notice of a proposed change.</p> <p>The potential for “exceptional circumstances” and their justification is reflected in Regulation 9(2) and 9(3).</p>                                                                                                                                                                |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Implementation in the Regulations</b>                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before a decision is taken.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>See Regulation 9 generally and Regulation 9(6) in particular.</p> <p>See Regulation 13(1) which places an obligation on a regulated airport operator to have regard to representations made to it.</p> |
| The airport managing body shall normally publish its decision or recommendation no later than two months before entry into force.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | See Regulation 13(2).                                                                                                                                                                                     |
| The airport managing body shall justify its decision with regard to the views of the airport users in the event that no agreement on the proposed changes is reached between the airport managing body and the airport users.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | See Regulation 13(3).                                                                                                                                                                                     |
| <p><b>Articles 6(3) and (4) - Appeal</b></p> <p>Member States shall ensure that in the event of a disagreement over a decision on airport charges taken by the airport managing body, either party may seek the intervention of the independent supervisory authority referred to in Article 10 which shall examine the justifications for the modification of the system or the level of airport charges.</p> <p>Paragraph 4. A modification of the level of airport charges decided upon by the airport managing body shall, if brought before the independent supervisory authority, not take effect until that authority has examined the matter. The independent supervisory authority shall, within four weeks of the matter being brought before it, may take an interim decision on the entry into force of the modification of airport charges, unless the final decision can be taken within the</p> | These provisions are not necessary to transpose, provided the requirements of Article 6(5)(b) are met.                                                                                                    |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                    | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| same deadline.                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p><b>Article 6(5) – Market investigation alternative</b></p> <p>A Member State may decide not to apply paragraphs 3 and 4 in relation to changes to the level of charges or the structure of the airport charges at those airports for which....:</p>  | <p>The decision is the decision to revise section 40 of the Airports Act 1986 and Article 31 of the 1994 Order to conform with the description in Article 6(5)(b). See Parts 7 and 8 which introduce those amendments.</p>                                                                                                                                                                                                                                                                                                                                        |
| <p>(b) there is a mandatory procedure under national law whereby the authority referred to in article 10 examines on a regular basis or in response to requests from interested parties whether such airports are subject to effective competition.</p> | <p>The examination of competition is found in new section 40B of the Airports Act 1986 Act inserted by Regulation 23(4) (and new Article 31B of the 1994 Order inserted by Regulation 25(4)).</p>                                                                                                                                                                                                                                                                                                                                                                 |
| <p>Whenever warranted on the basis of such examination, the Member State shall decide that the airport charges, or their maximum level, shall be determined or approved by the authority referred to in Article 10.</p>                                 | <p>See new section 40A(1)(b) of the Airports Act 1986 inserted by Regulation 23(4) (and new Article 31A(1)(b) inserted by Regulation 25(4)).</p> <p>The effects of designation for the purposes of section 40 of the Airports Act 1986 and of Article 31 of the 1994 Order include an obligation to impose conditions that the “CAA considers appropriate for regulating the maximum amounts that may be levied by the airport operator by way of airport charges at the airport...” (see section 40(3) of the 1986 Act and Article 31(3) of the 1994 Order).</p> |
| <p>This decision shall apply for as long as is necessary on the basis of the examination conducted by the same authority.</p>                                                                                                                           | <p>By virtue of the Airports Act 1986, the decision by the Secretary of State to impose price controls is of indefinite duration although subject to re-examination when appropriate. Price controls for a particular airport are reviewed, usually, every five years.</p>                                                                                                                                                                                                                                                                                        |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                                                  |
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| <p>The procedures, conditions and criteria applied for the purpose of this paragraph by the Member State shall be relevant, objective, non-discriminatory and transparent.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>See sections 40A and 40B, and section 40A(3) in particular (in Northern Ireland Articles 31A and 31B and Article 31A(3) in particular). The requirement to publish details of the particular procedure and criteria will provide transparency.</p>                                                     |
| <p><b>Article 7 - Airport transparency</b></p> <p>Member States shall ensure that the airport managing body provides each airport user, or the representatives or associations of airport users, every time consultations referred to in Article 5(1) are to be held with information on the components serving as a basis for determining the level of all charges levied at each airport by the airport managing body.</p> <p>The information shall include at least:</p> <ul style="list-style-type: none"> <li>(a) a list of the various services and infrastructure provided in return for the airport charge levied;</li> <li>(b) the methodology used for setting airport charges;</li> <li>(c) the overall cost structure with regard to the facilities and services which airport charges relate to;</li> <li>(d) the revenue of the different charges and the total cost of the services covered by them;</li> <li>(e) any financing from public authorities with regard to the facilities and services which airport charges relate to;</li> <li>(f) forecasts of the situation at the airport as regards the charges, traffic growth and proposed investments;</li> <li>(g) the actual use of airport infrastructure and equipment over a given period; and</li> <li>(h) the predicted output of any major proposed investments in terms of their effects on airport capacity.</li> </ul> | <p>The provision of information under Article 7(1) of the Directive actually follows the receipt of information under Article 7(2) (reflected in Regulation 7 (Advance Information from airport users)).</p> <p>Regulation 8 sets out the information which must be supplied by the airport operator.</p> |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Implementation in the Regulations</b>                                                                                                 |
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| <p><b>Article 7(2) - Provision of information by airport users</b></p> <p>Member States shall ensure that airport users submit information to the airport managing body before every consultation, as provided for in Article 5(1), concerning in particular:</p> <ul style="list-style-type: none"> <li>(a) forecasts as regards traffic;</li> <li>(b) forecasts as to the composition and envisaged use of their fleet;</li> <li>(c) their development projects at the airport concerned;</li> <li>(d) their requirements at the airport concerned.</li> </ul> | Regulation 7 establishes what is the first step in a consultation process.                                                               |
| <p><b>Article 7(3) - Confidentiality</b></p> <p>Paragraph 3. Subject to national legislation, the information provided on the basis of this Article shall be considered as confidential or economically sensitive and handled accordingly. In the case of airport managing bodies that are quoted on the stock exchange, stock exchange regulations in particular shall be complied with.</p>                                                                                                                                                                    | Regulation 31 and Schedule 3 to the Regulations provides for information to be treated as confidential subject to permitted disclosures. |
| <p><b>Article 8 - New infrastructure</b></p> <p>Member States shall ensure that the airport managing body consults with airport users before plans for new infrastructure projects are finalised.</p>                                                                                                                                                                                                                                                                                                                                                            | Regulation 27 (Consultation on infrastructure plans) gives effect to this obligation.                                                    |
| <p><b>Article 9 - Quality standards</b></p> <p>In order to ensure smooth and efficient operations at an airport, Member States shall take the necessary measures to allow the airport managing body and the</p>                                                                                                                                                                                                                                                                                                                                                  | The potential relevance of service level agreements is acknowledged by Regulation 12.                                                    |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                    | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                                                                    |
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| <p>representatives or associations of airport users at the airport to enter into negotiations with a view to concluding a service level agreements with regard to the quality of service provided at the airport. These negotiations on service quality may take place as part of the consultations referred to in Article 5(1).</p>                    | <p>Where the substantive obligations of a consultation take place in the context of a negotiation for a service level agreement between an airport and an airport user, there is no need for the airport operator to conduct a distinct consultation with respect to the airport user concerned (see Regulation 12(1)).</p> |
| <p>Any such service level agreement shall determine the level of the service to be provided by the airport managing body which takes into account the actual level of airport charges and the level of service to which airport users are entitled in return for airport charges.</p>                                                                   | <p>See definition of “service level agreement” in Regulation 12(3).</p>                                                                                                                                                                                                                                                     |
| <p><b>Article 10 - Differentiation of services</b></p> <p>Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim of providing tailored services or a dedicated terminal or part of a terminal.</p>              | <p>See Regulation 15 (Basis for providing differentiated services).</p>                                                                                                                                                                                                                                                     |
| <p>The level of airport charges may be differentiated according to the quality and scope of such services and their costs or any other objective and transparent justification. Without prejudice to article 3 on non-discrimination among airport users, airport managing bodies shall remain free to set any such differentiated airport charges.</p> | <p>See Regulation 14.</p>                                                                                                                                                                                                                                                                                                   |
| <p>Member States shall take the necessary measures to allow any airport user wishing to use the tailored services or dedicated</p>                                                                                                                                                                                                                      | <p>See Regulation 15.</p>                                                                                                                                                                                                                                                                                                   |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Implementation in the Regulations</b>                                                                                                                                           |
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| terminal or part of a terminal, to have access to these services and terminal or part of a terminal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                    |
| In the event that more airport users wish to have access to the tailored services and/or a dedicated terminal or part of a terminal than is possible due to capacity constraints, access shall be determined on the basis of relevant, objective, transparent and non-discriminatory criteria.                                                                                                                                                                                                                                                                                                                                                                                | See Regulation 15.                                                                                                                                                                 |
| These criteria may be set by the airport managing body and Member States may require these criteria to be endorsed by the independent supervisory authority.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | There is no requirement in the Regulations for the criteria, which are to be determined by the airport operator, to be endorsed by the CAA (as independent supervisory authority). |
| <p><b>Article 11 - Independent supervisory authority</b></p> <p>Member States shall nominate or establish an independent body as their national independent supervisory authority in order to ensure the correct application of the measures taken to comply with this Directive and to assume, at least, the tasks assigned under Article 6. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(5), including with the approval of the charging system and/or the level of airport charges, provided that it meets the requirements of paragraph 2 of this Article.</p> | The CAA will be the UK's independent supervisory authority and the Department has notified the Commission of this.                                                                 |
| Paragraph 2. In compliance with national law, this Directive shall not prevent the independent supervisory authority from delegating, under its supervision and full responsibility, the implementation of this                                                                                                                                                                                                                                                                                                                                                                                                                                                               | No transposition is needed for this provision.                                                                                                                                     |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                               |
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| Directive to other independent supervisory authorities, provided that implementation takes place in accordance with the same standards.                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                        |
| <p>Paragraph 3. Member States shall guarantee the independence of the independent supervisory authority by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership of airports, airport managing bodies or air carriers shall ensure that the functions relating to such ownership or control are not vested in the independent supervisory authority. Member States shall ensure that the independent supervisory authority exercises its powers impartially and transparently.</p> | <p>As to independence, see Regulation 29 and the new section 28 of the Civil Aviation Act 1982 which removes to power of the CAA to own, manage or operate aerodromes. There are various consequential amendments related to this change set out in Schedule 2 to the Regulations.</p> |
| Paragraph 4. Member States shall notify the Commission of the name and address of the independent supervisory authority, its assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.                                                                                                                                                                                                                                                                                                                                                    | This has been done administratively.                                                                                                                                                                                                                                                   |
| Paragraph 5. Member States may establish a funding mechanism for the independent supervisory authority, which may include levying a charge on airport users and airport managing bodies.                                                                                                                                                                                                                                                                                                                                                                                              | A funding mechanism for the CAA already exists and is found in section 11 of the Civil Aviation Act 1982.                                                                                                                                                                              |
| <p>Paragraph 6. Member States shall ensure, in respect of disagreements referred to in Article 6(3), that measures are taken to:</p> <ul style="list-style-type: none"> <li>(a) establish a procedure for resolving disagreements between the airport managing body and the airport users;</li> <li>(b) determine the conditions under which a disagreement may be brought to the</li> </ul>                                                                                                                                                                                          | The UK's transposition gives effect to Article 6(5) and not Article 6(3); hence this paragraph is not applicable.                                                                                                                                                                      |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Implementation in the Regulations</b>                                                                                                                                                                                                                                                                                                                                                 |
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| independent supervisory authority. The authority shall, in particular, dismiss complaints which it deems are not properly justified or adequately documented; and (c) determine the criteria against which disagreements will be assessed for resolution. These procedures, conditions and criteria shall be non-discriminatory, transparent and objective.                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                          |
| Paragraph 7. When undertaking an investigation into the justification for the modification of the system or the level of airport charges as set out in Article 6, the independent supervisory authority shall have access to necessary information from the parties concerned and shall be required to consult the parties concerned in order to reach its decision. Without prejudice to Article 6(4), it shall issue a final decision as soon as possible, and in any case within four months of the matter being brought before it. This period may be extended by two months in exceptional and duly justified cases. The decisions of the independent supervisory authority shall have binding effect, without prejudice to parliamentary or judicial review, as applicable in the Member States. | The UK's transposition gives effect to Article 6(5) and not Article 6(3); hence this paragraph is not applicable.<br><br>However, Regulation 30 (Furnishing of information to the CAA etc) applies provision of the Airports Act 1986 and the Airports (Northern Ireland) Order 1994 so that the CAA has appropriate information gathering powers for the purposes of these Regulations. |
| Paragraph 8. The independent supervisory authority shall publish an annual report concerning its activities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | See Regulation 32.                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Article 12 - Report and Revision</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | No transposition necessary.                                                                                                                                                                                                                                                                                                                                                              |
| <b>Article 13 - Transposition</b><br><br>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                          |

| <b>Requirement (and reference to relevant part of the Directive)</b>                                                                                                                                                                                                                                                                                            | <b>Implementation in the Regulations</b>                         |
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| <p>Directive by 15 March 2011. They shall forthwith inform the Commission thereof.</p> <p>... When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such references shall be laid down by Member States.</p> | <p>See reference in Explanatory Note and Transposition Note.</p> |

### Scrutiny history

The proposal that resulted in Directive 2009/12/EC was the subject of Explanatory Memorandum (EM) 5887/07 submitted to Parliament by the Department for Transport on 20 February 2007. The House of Commons European Scrutiny Committee considered the EM on 28 February 2007. The Committee recommended that the document was politically important, and did not clear it from scrutiny pending further information and developments (11th Report, Session 2006-2007, reference 28346). The House of Lords Select Committee on the European Union referred the EM to their Sub-Committee B for further consideration at the 1278th sift on 27 February 2007. On 7 March 2007 the Chairman of the House of Lords Select Committee on the European Union wrote to tell the Minister that the Committee would hold the proposal under scrutiny pending further developments.

Further information was provided to both Committees in Ministerial letters sent on 8 November 2007, 23 November 2007, 10 December 2007, 20 February 2008 and 2 December 2008. The House of Commons European Scrutiny Committee cleared the proposal from scrutiny on 28 November 2007 (4th Report, Session 2007-2008). The House of Lords Select Committee on the European Union cleared the proposal on 4 December 2007.