

Title: Air Traffic Services (Exemption) Order 2011 Lead department or agency: Department for Transport Other departments or agencies: Civil Aviation Authority	Impact Assessment (IA)
	IA No: DfT00042
	Date: 07/02/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Jeremy Ketley 0207 944 5114 jeremy.ketley@dft.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

There is a competitive market in the provision of air navigation services at UK airports in which airports either provide the service themselves or contract with other providers. There is a time limited statutory exemption from licensing such services which is set to expire on 31 March 2011. Unless the exemption is extended for a further period, the Civil Aviation Authority (CAA) would be required to establish a new licensing regime for around 66 UK airport air navigation service providers (ANSPs) as from 1 April 2011 at an estimated start up cost of £850k and ongoing annual costs of £320k - 480k per annum.

What are the policy objectives and the intended effects?

The policy objectives of this Statutory Instrument are to provide a further period of exemption, thereby maintaining the status quo, and avoid the need for the CAA to determine and consult on new license conditions for 66 airport ANSPs, and monitor ongoing compliance. This will avoid anticipated costs of £3.86m and added regulatory burden. The new period of exemption will expire on 31 December 2019, to coincide with the end of the second performance plan required under the EU's Single European Sky (SES) initiative. This means that whether the exemption should apply from 1 January 2020, and in what form, can be reviewed in the context of the requirements of the third SES performance plan.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Do nothing. The exemption would lapse and the CAA would need to determine and consult on license conditions for 66 Airport ANSPs, and monitor ongoing compliance at a total projected cost of £3.86 million.

1) Provide a further time limited exemption until 31 December 2019. This is the preferred option. It avoids the costs associated with the Do Nothing option and meets the Coalition Agreement on including sunset clauses to ensure regulations are regularly reviewed.

2) Provide an indefinite period of exemption. The same cost benefits as option 1), but does not meet the Coalition Government's agreement to ensure that regulations are reviewed.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed
12/2018

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Theresa Villiers..... Date: 13th February 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Provide a further period of exemption from 1 April 2011 to 31 December 2019

Price Base Year 2010	PV Base Year 2010	Time Period Years 9	Net Benefit (Present Value (PV)) (£m)		
			Low: £3.26m	High: £4.62m	Best Estimate: £3.86m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There are no costs associated with this option and hence no costs to business.

Other key non-monetised costs by 'main affected groups'

There are no key non-monetised costs associated with this option

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£850k	£320k	£3.26m
High	£1ml	£480k	£4.62m
Best Estimate	£850k	£400k	£3.86m

Description and scale of key monetised benefits by 'main affected groups'

Under the "Do Nothing" option, introducing a new licensing regime for c66 UK airport based ANSPs will require start up costs of £850k for CAA and some 66 airport based ANSPs, and ongoing costs of £320k to £480k associated with monitoring compliance and enforcement. The CAA is a Trading Fund and airports are commercially operated so much of these costs will eventually be born by the wider airline Industry, and subsequently, passed on to consumers. Under this option these costs are avoided.

Other key non-monetised benefits by 'main affected groups'

Under "Do Nothing", a key risk is that a licensing regime would not be in place in time, and airport ANSPs would be operating illegally from 1 April 2011. Once a new licensing regime was implemented, it could generate the need for the employment of independent consultants or references to the Competition Commission by aggrieved service providers. Also, licenses might be time limited and require further rounds of consultation and issue. Under this option these potential costs are avoided.

Key assumptions/sensitivities/risks

Discount rate (%)

The key risk is timetable slippage leaving airport based ANSPs providing services illegally from 1 April 2011 until such a time as the new exemption came into force or the CAA could issue licenses. The key assumptions are that if a new licensing regime was required, then the CAA would adopt a relatively light touch approach, the CAA would not need independent consultancy advice, that there would be no references to the Competition Commission and that the licenses would last 10 years. If any of these assumptions prove to be wrong, this would add to the costs of Do Nothing, and benefits of Option 1.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	AB savings: n/a	Net: n/a	Policy cost savings: n/a	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/04/2011		
Which organisation(s) will enforce the policy?			Civil Aviation Authority		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: n/a	Benefits: n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Provide an indefinite period of exemption

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: £3.26m	High: £4.62m	Best Estimate: £3.86

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There are no costs associated with this option and hence no costs to business.

Other key non-monetised costs by 'main affected groups'

Section 2 (Business) of the Coalition Agreement calls for "sunset clauses to ensure that the need for each regulation is regularly reviewed". An indefinite exemption would not honour this. Whereas, Option 1, the preferred option, which proposes a time limited exemption, does.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£850k	£320k	£3.26m
High	£1m	£480k	£4.62m
Best Estimate	£850k	£400k	£3.86m

Description and scale of key monetised benefits by 'main affected groups'

As for Option 1.

Other key non-monetised benefits by 'main affected groups'

As for Option 1

Key assumptions/sensitivities/risks

As for Option 1

Discount rate (%) 3.5%

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	AB savings: n/a	Net: n/a	Policy cost savings: n/a	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Options				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	Civil Aviation Authority				
What is the annual change in enforcement cost (£m)?	0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: n/a		Benefits: n/a		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
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Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<u>Sections 3, 4 and 5 of the Transport Act 2000</u>
2	The Air Traffic Services (Exemption) Order 2001 (SI 2001/287)
3	<u>Air Navigation Service Provision: The Contestability Assessment Economic Policy & Int'l Aviation Economic Regulation</u>
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices: Option 1

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0	0.85	0	0	0	0	0	0	0	0
Annual recurring benefits	0	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
Total annual benefits	0	1.24	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

PROBLEM UNDER CONSIDERATION

When the National Air Traffic Services was privatised in 2001, it was split into two separate organizations: NATS En Route Ltd (NERL) and NATS Services Ltd (NSL).

NERL was set up to provide services which, due to their monopoly like nature, would need to be regulated by the CAA to ensure a fair deal for users of the service. The main regulated service is the en route air navigation service where, for safety and operational efficiency, it is desirable for a single organisation to provide a unified service across UK airspace. Other regulated services include a centralised London Approach service and a service for helicopters operating between oil rigs in the North Sea and the mainland.

NSL was set up as a fully commercial organization to compete for business in unregulated air traffic service markets. The main market is the provision of air navigation services at airports (i.e. approach to the airport, landing and take-off). With the exception of approach services in the London area, mentioned in paragraph above, airports in the UK are free to self-provide air traffic services, or contract out to an outside supplier. There are currently 66 airport Air Navigation Service Providers (ANSPs), including 16 airports where NSL provide services.

To date, the effect of the current regulatory regime is that the CAA only licences air traffic services where there is not a contestable market. Where there is a contestable market, primarily in the provision of airport air traffic services, ANSPs are exempt from the need to be licensed.

The relevant statutory provisions are in the Transport Act 2000. Section 3 of the Transport Act 2000 states that a person commits an offence if he provides air traffic services in respect of a managed area unless he is authorised to do so by an exemption granted under section 4 of the Act or by a licence granted under section 5.

Article 3(1) of the Air Traffic Services (Exemption) Order 2001 (SI 2001/287) provides a general exemption authorising the provision of air traffic services, except for the provision of an area control service. Article 3 (2) of SI 2001/287 does not authorise the provision of an area control service from an area control centre. The purpose of this exclusion is to enable the CAA to issue licenses under section 5 of the Transport Act 2000 to provide these activities. Currently only NATS En Route Ltd (NERL) has been granted a licence to provide services under section 5 of the Act.

The net effect of SI 2001/287 is that the CAA does not need to license air traffic services provided from aerodromes.

At the time this SI was made, there were inhibitions about granting an extensive exemption by way of secondary legislation from a recently enacted Act of Parliament. Therefore, a time limited provision was included at Article 4 of SI 2001/287, which granted the exemption for a period of ten years.

The 10 years in the exemption was co-terminus with NERL's exclusive rights to provide certain regulated services – although there is not a direct link between this and the exemption of unregulated airport air traffic services.. The net result however, is that the current authorisation granted for airport ANSPs under Article 3 shall expire on 31 March 2011.

RATIONAL FOR INTERVENTION

Under the Do Nothing Option – the current period of exemption would expire on 31 March 2011 and, unless the CAA implemented a new licensing regime, around 66 Airport ANSPs would be committing an offence from 1 April 2011.

Where it exists, competition is regarded as offering the best prospect of delivering to consumers what they want in terms of price, service quality and investment. The CAA is under a duty to further the interests of operators of aircraft, airports and persons travelling in them, where the CAA thinks appropriate, by promoting competition. The current regime is designed to enable a regulatory approach through licensing of airport ANSPs, if it is considered that would deliver a better outcome for consumers. However, where effective competition can exist, any regulatory intervention is likely to be second best and can have a distortionary effect on the market, for example, such as interfering in commercial arrangements between airports and suppliers of air navigation services. In 2008, the CAA published review of contestability in the airport ANS market: [Air Navigation Service Provision: The Contestability Assessment | Economic Policy & Int'l Aviation | Economic Regulation](#). This work was commissioned by the Department for Transport to establish whether the UK could exercise a lighter touch regulatory approach on costs and charges for air navigation services under EC Regulation 1794/2006 (the ANS Charging Regulation). One of the conclusions of the Review was that significant competitive pressures exist at UK airports which incentivise them to focus on costs and levels of service, including on provision of ANS. The CAA keeps the matter under review in accordance with section 91 of the Transport Act, but see no grounds at present for any additional regulatory intervention in the airport ANS market.

In June 2008, the European Commission launched the second phase of the Single European Sky (SES II), which included the introduction of a new Performance Scheme by 1 January 2012. This will require Member States to develop National Performance Plans to set out how Member States will contribute towards EU wide performance targets. The CAA will be responsible for producing the National Plan for the UK and have advised that the new performance scheme will not necessitate licensing of airport ANS from 1 April 2011.

Overall, the CAA advises that there is no competition or other reason to intervene in the contestable market for the provision of airport ANS and, therefore, a further period of exemption should be granted in order to maintain the status quo.

Granting a further period of exemption will avoid the following projected costs of licensing ANSPs operating at over around 66 UK airports from 1 April 2011:

Transitional CAA costs

Based on the CAA's experience of current licensing and certification activities, they anticipate that to get a new licensing scheme up and running would involve the following activities:

i) Development of a new licence regime -, including evaluation of options, liaison with DfT, the aviation industry and other stakeholders, specifying the outcomes required of licensing, establishment of a database and monitoring mechanisms. Based on previous experience, CAA anticipates that this may cost £100k, which is equivalent to one Full Time Equivalents (FTEs), plus additional administrative and software costs of £20k.

ii) The CAA would need to publicise the new licensing regime to airports and ANSPs, discuss and provide explanations and organise stakeholder briefings and meetings. IT would need to prepare for and handle the receipt of an anticipated c66 applications for a licence. CAA anticipates that this would require about half an FTE, plus expenses and administrative costs, totalling £50k;

iii) The CAA would need to carry out formal consultation with airports, ANSPs and airlines on the content of licenses and the licence conditions to be applied; deal with issues arising from 66 different licences with affected airports, ANSPs and airlines; analysis of responses made in respect of the 66 licences. Based on experience of work other regulatory activities it carries out, CAA anticipate that this would require 2.5 FTEs, totalling £200k;

iv) The CAA would need to work up final decisions on each of the 66 licences; make recommendations to, and gain consent of, the Board and issue the 66 licences, and inform other stakeholders of the outcome. CAA anticipate that this would require 0.75 of an FTE, plus administration and Board costs, totalling £75k.

These figures assume that CAA would not need to recruit and train additional staff – so therefore do not include any recruitment and training costs.

Total CAA set up (Transitional) costs are therefore anticipated to equal at least £425k .

We anticipate that airport ANSPs transitional costs collectively will at least mirror those of the CAA. I.e. that work carried out by the CAA will be collectively matched by the 66 affected airports, plus ANSPs and any airlines engaged in the consultation. Although it is not possible to quantify, this is likely to be a conservative estimate of the cost, and, if the preferred option was licensing, would require more further work to refine the likely cost on business.

Therefore, we estimate that the total transitional costs of starting up a new licensing scheme would be at least £850K.

Ongoing costs

Once licences have been issued, the CAA estimate that it would require 2 or 3 FTE's, costing £160k to £240k per annum to monitor and enforce compliance with licence conditions.

The CAA's projected figures assume a fairly "light touch" regulatory regime with few substantive conditions in the initial licences although there may need to be bespoke conditions in some licences depending on local circumstances. The figures also assume no external consultancy advice and no appeals to the Competition Commission. Hence, the projected benefits of the preferred option are a conservative estimate, given that it is difficult to assess the extent of these potential additional costs.

We anticipate that airport ANSPs' ongoing costs collectively will at least match those of the CAA.

Overall, we anticipate that the annual ongoing costs will be in the range of £320k to £480k

This would represent a significant extension of regulation of the airport ANSP market.

OPTIONS CONSIDERED (inc costs and benefits)

Three options have been considered.

Do nothing: Let the time limited exemption lapse.

Benefits. None.

Costs. The CAA would need to establish a new licensing regime for airport ANSPs to enable them to operate legally, at an estimated start up cost of £850k and ongoing costs of £320k to 480k per annum.

Option 1. Provide a further defined period of exemption.

Benefits.

This avoids the costs associated with the Do Nothing option.

Section 2 (Business) of the Coalition Agreement calls for “sunset clauses to ensure that the need for each regulation is regularly reviewed”. This Option meets this by setting a further fixed date for review of the licensing exemption. Rather than a further ten year period, we propose extending the exemption to 31 December 2019. This will coincide with the end of the second performance plan required under the Single European Sky (SES) Performance Scheme. This is the European Commission’s initiative to drive forward Europe wide improvements in the provision of air navigation services. Each Member State is required to submit periodic National Performance Plans setting out each State will contribute towards the achievement of agreed EU wide targets. The first Reference Period is from 2012-2014. The second Reference Period is planned to be 2015 to 2019. Therefore, whether the exemption should apply beyond 1 January 2020, and in what form, can be reviewed in the context of the requirements of the third Reference Period of the SES Performance Scheme, and the requirements that imposes on airport air traffic services.

Costs. No key monetised costs. It maintains the status quo. However, some form of notification of the exemption may be required, but the costs of this, for example, an e-mail to airport ANSPs are likely to be negligible.

Option 2. Provide an indefinite exemption.

Benefits. As for option 1. Except - see costs below.

Costs. This option does not fulfil the coalition agreement request for sunset clauses to require a review of existing regulations. As per Option 1, some form of notification of the exemption may be required, but the costs of this, for example, an e-mail to airport ANSPs are likely to be negligible.

RISKS AND ASSUMPTIONS

The key risk is that the timetable for introducing legislation slips and the new period of exemption comes into force sometime after the 1 April 2011. This would mean that airport based ANSPs would providing services illegally until such a time as the new exemption came into force or the CAA could issue licenses.

The Key Assumption on costs is that if, by following the Do Nothing Option, the Government required that a new licensing regime was required, then, unless directed otherwise, the CAA would implement a relatively light touch regime. The ongoing costs also assume that, as a consequence, the CAA would not need to employ independent consultants and there would be no references to the Competition Commission. However, these remain potential costs, but are not monetised. Therefore, the benefits of the preferred option are a conservative estimate.

The monetised costs also assume that the licenses would last 10 years. However, if they were to last a shorter period, then there would be a further round of costs involved with publicity, handling new applications, consulting and deciding. Given the uncertainty, these costs are un-monetised.

ADMINISTRATIVE BURDENS AND POLICY SAVINGS CALCULATIONS

There are no new administrative burdens or policy savings associated with preferred option as it maintains the status quo.

WIDER IMPACTS

There are no wider impacts associated with the preferred option, as it maintains the status quo.

PREFERRED OPTION

Option 1. Provide a further defined period of exemption.

IMPLEMENTATION PLAN

A new regulation will be made, with effect from 1 April 2011 maintaining the current regime by providing a further period of exemption until 31 December 2019.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: The new period of exemption will expire on 31 December 2019 to as to require a review of the exemption prior to deciding whether a further period of exemption is desirable.</p>
<p>Review objective: The purpose of the review will be to check that the general exemption is still required and is timed to coincide with work that will be undertaken for the third SES Performance Plan, which will come into force on 1 January 2020.</p>
<p>Review approach and rationale: This will involve liaison with the CAA, who have responsibility for regulating and licensing air traffic services, and for producing the UK's SES Performance Plans. The CAA also carry out periodic contestability assessments of the airport ATM market as part of compliance with SES legislation.</p>
<p>Baseline: The current baseline is that there is a contestable market for the provision of airport air navigation services which negates the need for the CAA to intervene through licensing. The SES Performance regime does not require the CAA to use licensing as a means of enforcing compliance.</p>
<p>Success criteria: The success criteria are that the general exemption from licensing remains appropriate.</p>
<p>Monitoring information arrangements: The CAA periodic (approximately 5 yearly) contestability assessments of the market.</p>
<p>Reasons for not planning a PIR:</p>

Add annexes here.