

SCHEDULES

SCHEDULE 2

Section 7

ENFORCEMENT OF AIRSPACE CHANGE DIRECTIONS AND CONNECTED APPEALS

PART 1

ENFORCEMENT OF DIRECTIONS

Contravention notices

- 1 (1) The CAA may give a notice under this paragraph (a “contravention notice”) to a person if the CAA has reasonable grounds for believing that the person has contravened a direction requirement.
- (2) A contravention notice must—
 - (a) specify the direction requirement and contravention in respect of which it is given;
 - (b) explain the action that the CAA may take under this Schedule in connection with the contravention;
 - (c) explain that representations may be made about the matters in the notice before the end of the representation period.
- (3) The CAA may extend the representation period on one or more occasions by giving a notice to the person.
- (4) If the CAA withdraws a contravention notice, the CAA must give a notice to the person that includes its reasons for doing so.
- (5) As soon as practicable after giving a notice under sub-paragraph (1), (3) or (4), the CAA must publish the notice.
- (6) In this Schedule “representation period”, in relation to a contravention notice, means—
 - (a) the period of 14 days beginning with the day on which the contravention notice is given;
 - (b) where the period has been extended in accordance with sub-paragraph (3), the extended period.

Enforcement orders

- 2 (1) The CAA may give an order under this paragraph (an “enforcement order”) to a person if—
 - (a) the CAA has given the person a contravention notice (and has not withdrawn it),
 - (b) the representation period has ended,

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- (c) the CAA has considered any representations made before the end of that period (and not withdrawn) about the matters in the contravention notice, and
 - (d) the CAA has determined that the person has contravened a direction requirement specified in the contravention notice in one or more of the ways specified in the notice.
- (2) An enforcement order must—
- (a) specify the direction requirement and contravention in respect of which it is given;
 - (b) require the person to take the steps specified in the order to remedy the consequences of the contravention;
 - (c) require the person to take those steps within a reasonable period specified in the order;
 - (d) explain that the CAA may impose a penalty on the person in accordance with this Schedule if the person fails to take the specified steps within the specified period;
 - (e) give the CAA’s reasons for giving the order.
- (3) As soon as practicable after giving an enforcement order, the CAA must publish the order.

Enforcement orders: modification and revocation

- 3
- (1) The CAA may modify or revoke an enforcement order by giving a notice to the person to whom the order was given.
 - (2) The notice under sub-paragraph (1) must give the CAA’s reasons for the modification or revocation.
 - (3) As soon as practicable after giving a notice under sub-paragraph (1), the CAA must publish the notice.

Penalty for contravention of enforcement order

- 4
- The CAA may impose a penalty on a person if the CAA has determined that the person has contravened a requirement of an enforcement order.

Procedure after imposing a penalty

- 5
- (1) As soon as practicable after imposing a penalty under paragraph 4, the CAA must—
 - (a) give a notice to the person on whom the penalty is imposed;
 - (b) publish the notice.
 - (2) The notice must—
 - (a) state that the CAA has imposed a penalty;
 - (b) state the amount of the penalty;
 - (c) specify the requirement in the enforcement order and the contravention in respect of which it is given;
 - (d) specify a reasonable period within which the penalty must be paid or reasonable periods within which different portions of the penalty must be paid.

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- (3) In the case of a penalty calculated entirely or partly by reference to a daily amount (see paragraph 8), the notice must specify—
 - (a) the day on which the daily amounts begin to accumulate;
 - (b) the day on which, or the circumstances in which, they cease to accumulate.
- (4) As soon as practicable after daily amounts cease to accumulate, the CAA must—
 - (a) give a notice to the person on whom the penalty was imposed confirming the day on which they ceased to accumulate;
 - (b) publish the notice.

Amount of penalty

- 6 (1) The amount of a penalty imposed on a person under paragraph 4 must be the amount that the CAA determines to be—
 - (a) appropriate, and
 - (b) proportionate to the contravention for which it is imposed.
- (2) The penalty may consist of either or both of the following—
 - (a) a fixed amount (see paragraph 7);
 - (b) a daily amount (see paragraph 8).
- (3) In determining the amount of a penalty, the CAA must have regard, in particular, to any steps taken by the person on whom the penalty is to be imposed for contravening a requirement of an enforcement order towards—
 - (a) complying with, or remedying the consequences of the contravention of, the requirement of the order;
 - (b) complying with, or remedying the consequences of the contravention of, the direction requirement specified in the order.

Amount of penalty: fixed amount

- 7 A penalty imposed on a person under paragraph 4 must not consist of or include a fixed amount exceeding 10% of the person's turnover.

Amount of penalty: daily amounts

- 8 (1) A penalty imposed on a person under paragraph 4 must not consist of or include a daily amount exceeding 0.1% of the person's turnover.
- (2) A daily amount is payable in respect of each day in a period specified by the CAA in the notice under paragraph 5.
- (3) A specified period during which daily amounts accumulate must be the period that the CAA considers appropriate, subject to sub-paragraphs (4) and (5).
- (4) The period must begin after the day on which the CAA gives the notice under paragraph 5.
- (5) The period must end before—
 - (a) the day on which the person takes the steps specified under paragraph 2(2) (b) in the enforcement order, or
 - (b) if those steps are taken on different days, the last of those days.

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Withdrawal of penalties

- 9 (1) If the CAA withdraws a penalty, the CAA must give a notice to the person on whom the penalty was imposed that includes its reasons for withdrawing the penalty.
- (2) As soon as practicable after giving a notice under sub-paragraph (1), the CAA must publish the notice.

Recovering penalties

- 10 (1) This paragraph applies if all or part of a penalty imposed on a person under paragraph 4 is not paid within the period allowed for payment under the notice given in respect of the penalty under paragraph 5.
- (2) The unpaid balance carries interest from time to time at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (3) The CAA may recover from the person as a debt due to the CAA—
- (a) the unpaid balance, and
 - (b) any interest on the penalty that has not been paid.
- (4) Any sums received by the CAA by way of a penalty or interest under this Schedule must be paid into the Consolidated Fund.

Statement of policy on penalties

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

Turnover

- 12 (1) For the purposes of paragraphs 7 and 8(1), a person's turnover is to be determined in accordance with regulations made by the Secretary of State.
- (2) Regulations under this paragraph may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising a person's turnover;
 - (b) the period by reference to which a person's turnover is to be determined;
 - (c) the circumstances in which a person's turnover may be determined by reference to estimated amounts (including amounts estimated by the CAA);
 - (d) the determination of a person's turnover (in whole or in part) by reference to accounting rules specified or described in the regulations.

PART 2

APPEALS

Appeals against enforcement orders

- 13 (1) A person may appeal to the Tribunal against—
- (a) an enforcement order given to the person;
 - (b) a modification of an enforcement order given to the person.
- (2) The appeal may be against one or more of the following—
- (a) the decision to give the order;
 - (b) the decision as to the steps specified in the order;
 - (c) the decision as to the period allowed for taking those steps;
 - (d) the decision to modify the order.
- (3) The making of an appeal under this paragraph suspends the effect of the order or the modification (as the case may be) until the appeal is decided or withdrawn, unless the Tribunal orders otherwise.

Appeals against penalties

- 14 (1) A person may appeal to the Tribunal against a penalty imposed on the person under paragraph 4.
- (2) The appeal may be against one or more of the following—
- (a) the decision to impose the penalty;
 - (b) the decision as to the amount of the penalty;
 - (c) in the case of a penalty calculated entirely or partly by reference to a daily amount, the decision as to the period during which the daily amounts accumulate;
 - (d) the decision as to the period allowed for payment of the penalty.
- (3) Where a person appeals under this paragraph against a penalty, the CAA may not require the person to pay the penalty until the appeal is decided or withdrawn.

Decisions on appeal

- 15 (1) The Tribunal may allow an appeal under paragraph 13 or 14 only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that an error was made in the exercise of a discretion.
- (2) If the Tribunal allows an appeal under paragraph 13, the Tribunal may set aside or confirm the enforcement order or the modification (as the case may be).
- (3) If the Tribunal does not allow an appeal under paragraph 13, the Tribunal must confirm the enforcement order or the modification (as the case may be).
- (4) If the Tribunal allows an appeal under paragraph 14, the Tribunal may—
- (a) set aside or confirm the penalty;

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- (b) vary the amount of the penalty;
 - (c) vary a period referred to in paragraph 14(2)(c) or (d).
- (5) If the Tribunal does not allow an appeal under paragraph 14, the Tribunal must confirm the penalty.

Further appeals

- 16 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Tribunal under paragraph 15.
- (2) An appeal under this paragraph may be brought by a party to the proceedings before the Tribunal.
- (3) An appeal may not be brought without the permission of—
- (a) the Tribunal, or
 - (b) the appropriate court.
- (4) In this paragraph “the appropriate court”—
- (a) in the case of an appeal from proceedings in England and Wales or Northern Ireland, means the Court of Appeal;
 - (b) in the case of an appeal from proceedings in Scotland, means the Court of Session.

PART 3

INTERPRETATION

Definitions

- 17 In this Schedule—
- “contravention” means a failure to comply and related expressions are to be interpreted accordingly;
 - “contravention notice” has the meaning given in paragraph 1(1);
 - “direction requirement”, in relation to a person, means any requirement imposed on the person by a direction given under section 2 or 3;
 - “enforcement order” has the meaning given in paragraph 2(1);
 - “representation period”, in relation to a contravention notice, has the meaning given in paragraph 1(6);
 - “the Tribunal” means the Competition Appeal Tribunal.