

## SCHEDULES

### SCHEDULE 6

Section 10

#### NEW SCHEDULE C1 TO THE TRANSPORT ACT 2000

This Schedule sets out the new Schedule C1 to the Transport Act 2000, to be inserted after Schedule B1 to that Act (inserted by section 10 above)—

#### “SCHEDULE C1

Section 25

#### INFORMATION

### PART 1

#### POWER TO OBTAIN INFORMATION

##### **Power to obtain information**

- 1 (1) The CAA may by notice require a person to provide—
  - (a) information, or
  - (b) a document that is in the person’s custody or under the person’s control.
- (2) In this Schedule “document” means anything in which information is recorded.
- (3) The CAA may give a notice under this paragraph only in respect of information or documents that it reasonably requires for the purpose of carrying out its functions under section 34 or Schedule B1.
- (4) The notice may require the information or document to be provided—
  - (a) at a time and place specified in the notice;
  - (b) in a form and manner specified in the notice.
- (5) The notice may not require a person to provide information or documents that the person could not be compelled to provide in evidence in civil proceedings before the High Court or, in Scotland, the Court of Session.

### PART 2

#### ENFORCEMENT: INFORMATION

##### **Enforcement of information notice**

- 2 (1) If a person fails to comply with a notice under paragraph 1 without reasonable excuse, the CAA may do either or both of the following—
  - (a) impose a penalty on the person;

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- (b) enforce the duty to comply with the notice in civil proceedings for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.
- (2) The amount of the penalty must be the amount that the CAA determines to be—
  - (a) appropriate, and
  - (b) proportionate to the failure in respect of which it is imposed.
- (3) A penalty may consist of either or both of the following—
  - (a) a fixed amount;
  - (b) an amount payable in respect of each day in a period specified by the CAA (a “daily amount”).
- (4) A fixed amount must not exceed £2,000,000.
- (5) A daily amount must not exceed £100,000.
- (6) A specified period during which daily amounts accumulate must be the period that the CAA considers appropriate, subject to sub-paragraphs (7) and (8).
- (7) The period must begin after the day on which the CAA gives the notice under paragraph 6 stating that it has imposed the penalty.
- (8) The period must end before the day on which the person provides the information or documents specified in the notice under paragraph 1.
- (9) The Secretary of State may by regulations replace the amount for the time being specified in sub-paragraph (4) or (5).

#### **Penalty for providing false information**

- 3 (1) The CAA may impose a penalty of a fixed amount on a person where it is satisfied beyond reasonable doubt that the person, in giving information to the CAA, has committed an offence under section 101 (making of false statements etc).
- (2) Where a penalty is imposed on a person under this paragraph by the CAA, that person may not at any time be convicted of the offence under section 101 in respect of the act or omission giving rise to the penalty.
- (3) The amount of a penalty imposed on a person under this paragraph must be the amount that the CAA determines to be—
  - (a) appropriate, and
  - (b) proportionate to the action in respect of which it is imposed, but subject to a maximum of £2,000,000.

#### **Penalty for destroying documents etc.**

- 4 (1) The CAA may impose a penalty of a fixed amount on a person if the person intentionally alters, suppresses or destroys a document that the person is required to produce by a notice under paragraph 1.
- (2) The reference in sub-paragraph (1) to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in a legible format.

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- (3) The amount of a penalty imposed on a person under this paragraph must be the amount that the CAA determines to be—
- (a) appropriate, and
  - (b) proportionate to the action in respect of which it is imposed,
- but subject to a maximum of £2,000,000.

### **Procedure before imposing a penalty**

- 5 (1) Before imposing a penalty on a person under paragraph 2, 3 or 4, the CAA must—
- (a) give the person a notice about the proposed penalty;
  - (b) publish the notice as soon as practicable;
  - (c) send a copy of the notice to the persons listed in sub-paragraph (4);
  - (d) consider any representations made about the proposed penalty in the period specified in the notice (and not withdrawn).
- (2) The notice under sub-paragraph (1) must—
- (a) state that the CAA proposes to impose a penalty;
  - (b) state the proposed amount of the penalty;
  - (c) give the CAA's reasons for imposing the penalty.
- (3) In the case of a penalty under paragraph 2 calculated entirely or partly by reference to a daily amount, the notice under sub-paragraph (1) must specify—
- (a) the day on which daily amounts would begin to accumulate;
  - (b) the day on which, or the circumstances in which, they would cease to accumulate.
- (4) The persons are—
- (a) any owners or operators of aircraft, or any bodies representing them, that the CAA considers appropriate;
  - (b) any owners or managers of aerodromes, or any bodies representing them, that the CAA considers appropriate;
  - (c) the Secretary of State.
- (5) The period specified in the notice under sub-paragraph (1) for making representations must be a period of not less than 21 days beginning with the day on which the notice is given to the person.
- (6) Before varying the proposed amount of a penalty, the CAA must—
- (a) give the person on whom the penalty is to be imposed a notice about the proposed variation;
  - (b) publish the notice as soon as practicable;
  - (c) send a copy of the notice to the persons listed in sub-paragraph (4);
  - (d) consider any representations made about the proposed variation in the period specified in the notice (and not withdrawn).
- (7) In the case of a penalty under paragraph 2 calculated entirely or partly by reference to a daily amount, the reference in sub-paragraph (6) to varying the proposed amount of the penalty includes a reference to—
- (a) varying the day on which daily amounts would begin to accumulate, and

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- (b) varying the day on which, or circumstances in which, they would cease to accumulate.
- (8) The notice under sub-paragraph (6) must—
  - (a) specify the proposed variation;
  - (b) give the CAA's reasons for the proposed variation.
- (9) The period specified in the notice under sub-paragraph (6) for making representations must be a period of not less than 21 days beginning with the day on which the notice is given to the person.
- (10) The CAA may withdraw a notice under sub-paragraph (1) or (6) at any time by giving notice to the person on whom it is proposed to impose the penalty.
- (11) As soon as practicable after giving a notice under sub-paragraph (10), the CAA must—
  - (a) publish the notice;
  - (b) send a copy of the notice to the persons listed in sub-paragraph (4).

#### **Procedure after imposing penalty**

- 6 (1) As soon as practicable after imposing a penalty on a person under paragraph 2, 3 or 4, the CAA must—
  - (a) give a notice to the person on whom the penalty is imposed;
  - (b) publish the notice;
  - (c) send a copy of the notice to the persons listed in sub-paragraph (4).
- (2) The notice must—
  - (a) state that the CAA has imposed the penalty;
  - (b) state the amount of the penalty;
  - (c) give the CAA's reasons for imposing the penalty;
  - (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.
- (3) In the case of a penalty under paragraph 2 calculated entirely or partly by reference to a daily amount, the notice must specify—
  - (a) the day on which the daily amounts begin to accumulate;
  - (b) the day on which, or circumstances in which, they cease to accumulate.
- (4) The persons are—
  - (a) any owners or operators of aircraft, or any bodies representing them, that the CAA considers appropriate;
  - (b) any owners or managers of aerodromes, or any bodies representing them, that the CAA considers appropriate;
  - (c) the Secretary of State.
- (5) 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) send a copy of the notice to the persons listed in sub-paragraph (4).

## PART 3

### APPEALS AGAINST PENALTIES: INFORMATION

#### Appeals against penalties

- 7 (1) A person may appeal to the Competition Appeal Tribunal against a penalty imposed on the person under paragraph 2, 3 or 4.
- (2) The appeal may be against one or more of the following—
- (a) a decision to impose a penalty;
  - (b) a 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, a decision as to the period during which daily amounts accumulate;
  - (d) a 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.
- (4) In any appeal where the commission of an offence under section 101 is an issue requiring determination, the CAA must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

#### Decisions on appeal

- 8 (1) The Competition Appeal Tribunal may allow an appeal under paragraph 7 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) It may—
- (a) confirm or set aside the penalty;
  - (b) give the CAA any directions that it considers appropriate, including directions about the time within which the CAA must act.
- (3) It may not direct the CAA to do anything that the CAA would not have the power to do apart from the direction.
- (4) When deciding an appeal under paragraph 7 (including giving directions), the Competition Appeal Tribunal must have regard to the matters in respect of which duties are imposed on the CAA by section 2.

#### Further appeals

- 9 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Competition Appeal Tribunal under paragraph 8, including a direction.
- (2) An appeal under this paragraph may be brought by a party to the proceedings before the Competition Appeal Tribunal.
- (3) An appeal may not be brought under this paragraph without the permission of—
- (a) the Competition Appeal Tribunal, or

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- (b) the appropriate court.
- (4) “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.”