

Airport Charges Regulations Policy on the Designation and De-Designation of Airports with More Than 5 Million Passengers

The following policy applies only in relation to an airport in Great Britain which is a regulated airport for the purposes of the [Airport Charges Regulations 2011](#). This document details the procedure and criteria to be used when deciding whether designation is warranted for the purposes of section 40 of the Airports Act 1986 (on the basis of a market power examination by the CAA) in accordance with section 40A(2) of that Act. An airport is such a “regulated airport” during a calendar year if more than five million passenger movements took place at the airport in the year but one preceding that year.

In respect of airports in Great Britain which are not “regulated airports” for the purposes of the 2011 Regulations, the existing policy continues to apply as set out in our [‘Decision on proposed designation and de-designation’](#) document.

By virtue of section 40B of the Airports Act 1986, but subject to the exceptions in section 40B(3), the CAA must undertake a market power examination if asked to by:

- a) the Secretary of State, or
- b) a person who appears to the CAA to have a sufficient interest in the examination.

The CAA has discretion to undertake such an examination on its own initiative where it considers it appropriate to do so.

After the CAA has examined whether an airport operator in relation to a regulated airport has, or is likely to acquire, substantial market power (whether alone or taken with such other persons as the CAA considers relevant) then the CAA must publish a report setting out its findings.

The Secretary of State, on receipt of such report, would then consider whether designation of the airport (for the purposes of section 40 of the Airports Act 1986) is warranted on the basis of the CAA’s examination as set out in its report. In particular, and consistent with current policy, we believe designation would be warranted for airports with, or which are likely to acquire, substantial market power and where

- a) domestic and EU competition law may not be sufficient to address the risk that, absent regulation, the airport would increase and sustain prices profitably above the

- competitive level or restrict output or quality below the competitive level; and
- b) designation would deliver additional benefits (i.e. over and above competition law) which exceed the costs and potential adverse effects of such designation (i.e. the incremental benefits are positive).

Prior to taking a final designation decision for the purposes of section 40 of the Airports Act 1986 the Secretary of State would expect to undertake some form of consultation with those with an interest in the decision. This would not, however, constitute a review or rehearing as to the substantive issue of whether the airport operator has, or is likely to acquire, substantial market power.

In the event that the CAA undertakes a market power examination under section 40B in respect of an airport which is at the time designated for the purposes of section 40, but concludes that the airport operator in relation to that regulated airport no longer has and is not likely to acquire substantial market power (as assessed) then the Secretary of State would expect to revoke the designation, subject to consultation and detailed consideration of all relevant matters.