



Department
for Transport

Civil Aviation Act 2012: making the transition to the new framework for airport economic regulation

Overview

The Department for Transport (DfT) conducted a consultation with aviation industry stakeholders on a draft Commencement Order which set out the timetable for the transition from the airport economic regulation regime under Part IV of the Airports Act 1986 (1986 Act) and the Airports (Northern Ireland) Order 1994 (1994 Order) to that under Part 1 of the Civil Aviation Act 2012 (2012 Act). The consultation was held between 10 December 2012 and 25 January 2013.

The purpose of the consultation was to share this Order in draft to obtain views on whether the proposed timing of the switching off of provisions under the present regime and the switching on of provisions under the new regime is consistent with the policy intention of providing a smooth transition from the airport economic regulation framework under the 1986 Act and the 1994 Order to that set out in the 2012 Act. It was also an opportunity to raise any unidentified consequences for the proposed timings.

This document provides a summary of responses to that consultation and addresses questions raised by respondents.

Responses to consultation

DfT received a total of 5 responses from stakeholders. The respondents were:

British Air Transport Association
Gatwick Airport Limited
Heathrow Airport Limited
Heathrow Airline Operators Committee
Stansted Airport Limited

Summary of responses

A short summary of respondents' views is presented below.

The Civil Aviation Bill received Royal Assent on 19 December 2012 and the opportunity to view and comment on the draft Order bringing into force the new

airport economic regulation provisions was broadly welcomed by airline representative bodies and airport operators.

The majority of respondents also supported the policy aim of providing a smooth transition to the new regime in a timely manner, and agreed that the draft Order provided this. No respondents disagreed with this policy aim, but one respondent did highlight the need to consider that commencing the CAA powers as quickly as possible was not necessarily consistent with delivering a smooth transition.

Airline representative bodies were content with the proposed timetable for transition to the new regime and did not raise any concerns with the draft Order.

Airport operators were also broadly content with the proposed timetable. In the main, airport operators were keen to ascertain the practical implications of the transition. For example, some airport operators raised concerns with the approach that those airports designated under the 1986 Act at the end of the interim period would be deemed to have met the market power test and therefore would require a licence under the new regime. Concern was expressed that this may lead to operators being subject to regulation without proper market power analysis.

Particular comments and questions raised by respondents are addressed below.

DfT response following consultation

Having taken into account the consultation responses, the DfT remains satisfied that the Commencement Order provides a sensible and timely transition between the two regimes. In their responses, airport operators raised some questions regarding the practicalities of the transition, in particular if any action was required on their part; and what would happen depending on action taken, or not taken, by the CAA. These questions are set out below, along with DfT's response.

Does an airport operator need to apply for a licence?

Airport operators asked if they are required to apply for a licence under the 2012 Act if they are deemed to have met the market power test under provisions at Schedule 10 to that Act.

Those airport operators that are deemed to have met the market power test on DATE A are not required to apply for a licence. Sections 14(3) and (4) of the 2012 Act provide that a person who is the operator of an airport area on a day on which the airport area becomes a dominant area at a dominant airport (in this instance, also DATE A) is to be treated as having made and published an application for a licence in accordance with the application process in s.14(1).

Furthermore, paragraphs 2(2) and (3) of Schedule 10 provide that on DATE A an operator of a designated airport under the 1986 Act will be treated as having met the market power test in respect of the whole of the airport under s.6 and that Part 1 of the 2012 Act has effect as if the CAA had made and published a notice of that determination under s.8.

Issuing of licences

Airport operators asked what would happen in the following circumstances with regard to operators deemed to have met the market power test:

- 1) if a licence was not in place on 1 April 2014, and
- 2) if a licence was put in place before 1 April 2014.

The CAA has stated that it has planned a timetable of work leading up to the end of Q5 and the commencement of Q6 for such operators. This includes:

April 2013: completing 'minded to' determinations in relation to Heathrow and Gatwick (Stansted was published in December 2012); a consultation on the appropriate form of any regulation; and a consultation on the licence conditions for each operator.

Autumn 2013: A further consultation on the form of regulation and the licence conditions for each operator.

By December 2013: Making market power determinations in relation to Heathrow, Gatwick and Stansted; and issuing the statutory notice on the CAA's proposal to grant licences under section 15 of the 2012 Act.

January 2014: CAA grants the licences with a 'coming into force' date of 1 April 2014.

If the CAA has not made a market power determination and a licence was not in place by 1 April 2014 for an airport operator deemed to have met the market power test then section 4 (Prohibition: exemption) applies, so that operators may continue to charge for the provision of airport operation services at the relevant airport until such a time as at least one or more of the criteria set out in s.4(4) is met.

Regarding a licence being put in place before 1 April 2014, the CAA has stated it does not intend for licence conditions to come into force before 1 April 2014. However, a licence may be put in place before this date – indeed, as noted above, it is the CAA's intention, given the requirements of section 15(8) to grant a licence at least 6 weeks before it comes into force, to issue licences in January 2014 but for the conditions therein not to come into force until after the end of Q5. Therefore, simultaneous regulation under both the 1986 Act and the 2012 Act will not occur.

These licence conditions will be subject to the appeals process as set out in Schedule 2 to the 2012 Act.

Issuance of licence in the absence of a market power determination

Airport operators questioned whether the CAA could introduce a licence under the 'treated as met', or deemed, market power provision in paragraph 2(2) of Schedule 10.

Under the 2012 Act, the CAA will issue a licence to an airport operator who is deemed to have met the market power test. This is to ensure that a change in the legislative framework from one day to the next does not result in an operator automatically falling out of regulation. To ensure that only those operators that satisfy the market power test will be issued with a licence, the CAA has committed to undertake market power assessments in relation to airports designated under the 1986 Act. These determinations, expected to be made by

December 2013, will be subject to the appeals process as set out in Schedule 1 of the 2012 Act. The 'deeming' provisions at Schedule 10 cease to have effect if the CAA makes and publishes a notice of a further market power determination in respect of the relevant airport area – see section 7(9), (10).

Sequencing the introduction of the CAA's powers

Airport operators sought assurance that the introduction of the CAA's powers will minimise uncertainty and provide clarity around the likely form of regulation and accompanying licence conditions before the CAA concludes its market power assessments.

The DfT believes that the draft Order as set out balances the need to minimise uncertainty whilst also providing a clear and structured introduction of the CAA's powers. We do not expect any minor changes to the draft Order to have any material impact on this. The CAA's timetable of work which is already underway (see above) should also provide further reassurance to the operators of the airports that are currently designated that prior to the CAA making any market power determinations the operators will have knowledge of the principal obligations that will (subject to consultation) be likely to be included within the initial licences including whether the licence will include a price control condition.

Therefore, the DfT does not believe that specifying the sequencing of particular provisions regarding and the granting of licences is necessary.

Use of powers under section 41 of the Airports Act 1986 and concurrent competition powers under the Civil Aviation Act 2012

Greater clarity was requested on how the CAA will determine which powers to use during the interim period.

The DfT agrees that an investigation under both sets of powers would be disproportionate. We understand that the CAA's expectation is that any existing cases under section 41 of the 1986 Act would be completed by the end of the interim period, and any new matter arising during the interim period would be dealt with under the concurrent competition functions as set out in sections 60 to 65 of the 2012 Act. However, it will be for the CAA to determine which powers are more appropriate to use with reference to a particular case at a particular time.

Additional sections being included in the Order

The focus of the consultation was on the commencement of provisions in the 2012 Act related to airport economic regulation. We can confirm that on DATE A sections 100 (CAA charges) and 103 (Civil sanctions), and on DATE B section 102 (CAA efficiency), will also be brought into force as part of this Order. Efficiency reporting requirements will also be laid on the CAA for 2013-14, using the non-legislative provision announced by the Minister of State to the Civil Aviation Bill Committee on 25 April 2012. Ministers may issue a reporting direction to the CAA, under the powers in section 21 of the Civil Aviation Act 1982 specifying the matters that should be addressed in the CAA's annual report.

The Minister announced that the Secretary of State would make an addition to the accounts direction for 2013 which would require the CAA to include an efficiency statement in the annual report.

Next steps

The Commencement Order will be signed by the Minister, on which date it comes into force. This date will be listed as the date the Order is 'made' on the front page of the final Order.

To comply with common commencement dates¹, references to "DATE A" and "the date on which this Order was made" in the draft Order will be replaced with 6 April 2013 in the final Order. DATE B as it appeared in the draft Order will be replaced with 1 April 2014 in the final Order to reflect the end of the interim period on 31 March 2014. Therefore, the interim period will be the period between 6 April 2013 and 31 March 2014.

¹ There are two common commencement dates each year, 6 April and 1 October. These are the dates on which any new Westminster legislation which has an impact on business should come into force so as to help businesses plan for new regulation and to increase awareness of the introduction of new or changed requirements.

Contact

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