



Draft Civil Aviation Bill: An effective regulatory framework for UK aviation

Volume 2: Draft Civil Aviation Bill and Explanatory Notes

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty
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B I L L

TO

Make provision about the regulation of operators of dominant airports; to confer functions on the Civil Aviation Authority under competition legislation; to make provision about aviation security; to make further provision about the Civil Aviation Authority’s membership, administration and enforcement functions; and for connected purposes

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

AIRPORTS

CHAPTER 1

REGULATION OF OPERATORS OF DOMINANT AIRPORTS

General duties

1 CAA’s general duty

- (1) The CAA must carry out its functions under this Chapter in a manner which it considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.
- (2) The CAA must do so, where appropriate, by carrying out the functions in a manner which it considers will promote competition in the provision of airport operation services.
- (3) In performing its duties under subsections (1) and (2) the CAA must have regard to—
 - (a) the need to secure that each holder of a licence under this Chapter is able to finance its provision of airport operation services in the area for which the licence is granted,

- (b) the need to secure that all reasonable demands for airport operation services are met,
 - (c) the need to promote economy and efficiency on the part of each holder of a licence under this Chapter in its provision of airport operation services at the airport to which the licence relates,
 - (d) any guidance issued to the CAA by the Secretary of State for the purposes of this Chapter,
 - (e) any international obligation of the United Kingdom notified to the CAA by the Secretary of State for the purposes of this Chapter, and
 - (f) the principles in subsection (4).
- (4) Those principles are that—
- (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and
 - (b) regulatory activities should be targeted only at cases in which action is needed.
- (5) If, in a particular case, the CAA considers that there is a conflict—
- (a) between the interests of different classes of user of air transport services, or
 - (b) between the interests of users of air transport services in different matters mentioned in subsection (1),
- its duty under subsection (1) is to carry out the functions in a manner which it considers will further such of those interests as it thinks best.
- (6) Section 4 of the Civil Aviation Act 1982 (CAA’s general objectives) does not apply in relation to the carrying out by the CAA of its functions under this Chapter.

2 Duty not to impose or maintain unnecessary burdens

- (1) Section 73 of the Regulatory Enforcement and Sanctions Act 2008 (functions to which duty not to impose or maintain unnecessary burdens applies) is amended as follows.
- (2) In subsection (1), after paragraph (a) insert—
- “(aa) the regulatory functions specified in subsection (2A),”.
- (3) After subsection (2) insert—
- “(2A) The regulatory functions referred to in subsection (1)(aa) are the regulatory functions exercised by the Civil Aviation Authority under Chapter 1 of Part 1 of the Civil Aviation Act 2011.”
- (4) In subsection (3) for “subsection (2)” substitute “subsection (2) or (2A)”.

3 Secretary of State’s general duty

- (1) The Secretary of State must carry out the Secretary of State’s functions under this Chapter in a manner which the Secretary of State considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.
- (2) The Secretary of State must do so, where appropriate, by carrying out the functions in a manner which the Secretary of State considers will promote competition in the provision of airport operation services.

- (3) In performing the duties under subsections (1) and (2) the Secretary of State must have regard to –
 - (a) the need to secure that each holder of a licence under this Chapter is able to finance its provision of airport operation services in the area for which the licence is granted,
 - (b) the need to secure that all reasonable demands for airport operation services are met,
 - (c) the need to promote economy and efficiency on the part of each holder of a licence under this Chapter in its provision of airport operation services at the airport to which the licence relates, and
 - (d) the principles in subsection (4).
- (4) Those principles are that –
 - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and
 - (b) regulatory activities should be targeted only at cases in which action is needed.
- (5) If, in a particular case, the Secretary of State considers that there is a conflict –
 - (a) between the interests of different classes of user of air transport services, or
 - (b) between the interests of users of air transport services in different matters mentioned in subsection (1),the duty under that subsection is to carry out the functions in a manner which the Secretary of State considers will further such of those interests as the Secretary of State thinks best.

Prohibition

4 Prohibition

- (1) Subsection (2) applies where for a period –
 - (a) a person (“P”) is the operator of an airport area (“area A”) that is a dominant area or part of a dominant area,
 - (b) area A is located at a dominant airport, and
 - (c) P does not have a licence in respect of area A.
- (2) The persons mentioned in subsection (3) may not require a person to pay a relevant charge in respect of airport operation services that are provided during that period in –
 - (a) area A, or
 - (b) any other area that forms part of the same airport and in respect of which P is the operator and does not have a licence.
- (3) Those persons are –
 - (a) the operator,
 - (b) a person who is connected to the operator,
 - (c) a person to whom the operator or a person connected to the operator has assigned the right to require payment of the charge, and
 - (d) a person acting on behalf of a person within paragraph (a), (b) or (c).
- (4) If a person requires payment of charges in contravention of subsection (2) –
 - (a) the charge is not recoverable by the person, and

- (b) if paid, the charge is recoverable from the person.
- (5) A charge is not irrecoverable under subsection (4)(a) or recoverable under subsection (4)(b) by reason of the invalidity of a market power determination or an operator determination if it is a charge in respect of services provided before invalidity is finally determined in legal proceedings.
- (6) Subsection (5) applies –
 - (a) whether or not the charge is required to be paid before the final determination of invalidity, and
 - (b) whether or not the charge is paid before that determination.
- (7) The CAA may enforce subsection (2) in civil proceedings for an injunction or, in Scotland, an interdict.
- (8) In this section “relevant charge” means any charge other than –
 - (a) a penalty payable by virtue of section 38C of the Civil Aviation Act 1982 (breaches of noise control schemes),
 - (b) a penalty payable by virtue of section 78A of the Civil Aviation Act 1982 (penalty schemes established by managers of aerodromes), or
 - (c) a charge payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services).

5 Prohibition: exemption

- (1) This section applies if a person who is the operator of an airport area (“area A”) does not have a licence in respect of the area on a day on which area A becomes a dominant area located at a dominant airport or part of such an area.
- (2) For the purposes of section 4, the person is to be treated as having a licence in respect of area A during the preliminary period.
- (3) The preliminary period begins for area A on the day mentioned in subsection (1).
- (4) The preliminary period ends for area A when one of the following occurs –
 - (a) a licence granted to the person in respect of area A, or an area that includes all of area A, comes into force;
 - (b) the person ceases to be the operator of area A;
 - (c) area A ceases to be a dominant area or part of a dominant area;
 - (d) the airport at which area A is located ceases to be a dominant airport.
- (5) If subsection (4)(a), (b) or (c) is satisfied in relation to a part of area A, the preliminary period ends for that part of the area.

Dominant airports

6 Dominant areas and dominant airports

- (1) For the purposes of this Part, an airport area is dominant if the CAA has –
 - (a) made a determination that the market power test is met in relation to the area (see section 7), and
 - (b) published a notice of the determination.

- (2) For the purposes of this Part, an airport is dominant if all or part of its core area is a dominant area or part of a dominant area.
- (3) In this Part –
 - “airport area” means an area that consists of or forms part of an airport;
 - “area” includes an area of land, a building or other structure and a part of a building or other structure.
- (4) In this Part “core area”, in relation to an airport, means –
 - (a) the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport,
 - (b) the passenger terminals, and
 - (c) the cargo processing areas,(subject to regulations under section 64).
- (5) In subsection (1) the reference to a determination does not include a determination that has ceased to have effect (see section 8(9) and (10)).

7 Market power test

- (1) The market power test is met in relation to an airport area if tests A to C are met by or in relation to the relevant operator.
- (2) For the purposes of tests A to C “the relevant operator” means the person who is the operator of the airport area at the time the test is applied.
- (3) Test A is that the relevant operator has, or is likely to acquire, substantial market power in a market, either alone or taken with such other persons as the CAA considers appropriate (but see subsections (6) and (7)).
- (4) Test B is that competition law does not provide sufficient protection against the risk that the relevant operator may engage in conduct that amounts to an abuse of that substantial market power.
- (5) Test C is that, for users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.
- (6) Test A is met only if –
 - (a) the market is a market for one or more of the types of airport operation service provided in the airport area (or for services that include one or more of those types of service), and
 - (b) geographically the market consists of or includes all or part of the airport area.
- (7) In relation to an airport area that includes all or part of the core area of an airport (as well as all or part of the rest of the airport), subsection (6) has effect as if the references to the airport area were references to the core area or, as appropriate, the part of the core area.
- (8) For the purposes of test B –
 - (a) conduct includes a failure to act and unintentional conduct, and
 - (b) conduct may, in particular, amount to an abuse of substantial market power if it is conduct described in section 18(2)(a) to (d) of the Competition Act 1998.

- (9) In test B “competition law” means –
- (a) Articles 101 and 102 of the Treaty on the Functioning of the European Union,
 - (b) Part 1 of the Competition Act 1998, and
 - (c) Part 4 of the Enterprise Act 2002 (market investigations).

8 Market power determinations

- (1) The CAA may make a determination that the market power test is or is not met in relation to an airport area (a “market power determination”) whenever it considers it appropriate to do so.
- (2) The CAA must make a market power determination in respect of an airport area if –
- (a) it is asked to do so by a person listed in subsection (3),
 - (b) the area is located at an airport that is a large airport at the time the request is made, and
 - (c) the area consists of or includes all or part of the core area of the airport.
- (3) Those persons are –
- (a) the operator of the airport area,
 - (b) the Secretary of State, and
 - (c) any other person whose interests are likely to be materially affected by the determination.
- (4) For the purposes of subsection (2)(b), an airport is a large airport during a calendar year if, in the previous calendar year, the number of passenger movements at the airport exceeded 5 million.
- (5) Subsection (2) does not apply if –
- (a) the CAA has previously made a market power determination in relation to the airport area (or an area that includes all of the airport area), and
 - (b) it considers that there has not been a material change of circumstances since that determination.
- (6) The CAA may treat a request under subsection (2) in respect of an airport area as if it were –
- (a) a number of requests in respect of different parts of that area, or
 - (b) a request in respect of an area that includes all of the airport area.
- (7) When choosing an airport area that is to be the subject of a market power determination, the CAA must have regard to the market or markets that are relevant for the purposes of test A (see section 7(3)).
- (8) The CAA may, in particular –
- (a) make separate market power determinations in respect of different areas which are located at the same airport and have the same relevant operator (within the meaning of section 7(2));
 - (b) make a market power determination in respect of an airport area that consists of two or more areas that are not adjacent if the areas are located at the same airport.
- (9) A market power determination in relation to an airport area ceases to have effect if the CAA publishes a notice of a further market power determination

in relation to the airport area or in relation to an area that includes all of the airport area.

- (10) Where the CAA –
- (a) publishes a notice of a market power determination in respect of an airport area (“determination A”), and
 - (b) subsequently publishes a notice of a market power determination in respect of part of the airport area or in respect of an area that includes part of the airport area,
- determination A ceases to have effect in relation to that part (but continues to have effect in relation to the rest of the airport area).
- (11) In this section “passenger movements” has the same meaning as in Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges.

9 Publication of market power determinations

- (1) As soon as practicable after making a market power determination the CAA must –
- (a) publish a notice of the determination, and
 - (b) send a copy of the notice to each person listed in subsection (2).
- (2) Those persons are –
- (a) the operator of the airport area that is the subject of the determination,
 - (b) if the CAA was required by section 8(2) to make the determination, any other person who requested the determination, and
 - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) If the notice does not include the CAA’s reasons for the determination, the CAA must as soon as practicable after publishing the notice –
- (a) publish its reasons, and
 - (b) send a copy of them to each person listed in subsection (2).

10 Operators of areas

- (1) For the purposes of this Part, a person is the operator of an airport area if the person has overall responsibility for the management of all of the area.
- (2) The Secretary of State may by regulations make provision about when a person is or is not to be treated for the purposes of this Part as having overall responsibility for the management of an airport area.
- (3) The regulations may, in particular, make provision for determining which person has overall responsibility for the management of an airport area where more than one person controls or may control the matters listed in subsection (4) to some extent.
- (4) Those matters are –
- (a) the types of services that are or may be provided in the area,
 - (b) the prices that are or may be charged for services provided in the area,
 - (c) the quality of services provided in the area,
 - (d) access to the area, and
 - (e) the development of the area.

- (5) The regulations have effect subject to determinations by the CAA under section 11.

11 Operator determinations

- (1) The CAA may determine whether, in a particular case, a person has overall responsibility for the management of an airport area.
- (2) A determination under subsection (1) is an “operator determination” for the purposes of this Part if the CAA states in the determination that it is made for the purposes of this section.
- (3) If the CAA publishes a notice of an operator determination in relation to a person, the person is to be treated for the purposes of this Part as having or not having overall responsibility for the management of the area in accordance with the determination (until the CAA publishes a notice withdrawing it).
- (4) When making an operator determination in relation to a person, the CAA must have regard, in particular, to—
- (a) regulations under section 10, and
 - (b) the extent to which the person controls or may control the matters listed in section 10(4).
- (5) The CAA must make an operator determination in respect of a person and an area that consists of or forms part of a dominant airport if it is asked to do so by the person.
- (6) Subsection (5) does not apply if—
- (a) the CAA has previously made an operator determination to the effect that the person requesting the determination does or does not have overall responsibility for the management of the area,
 - (b) it has not published a notice withdrawing that determination, and
 - (c) it considers that there has not been a material change of circumstances since that determination.
- (7) Subsection (5) does not apply if the CAA considers that it is possible to ascertain whether the person has overall responsibility for the management of the area from—
- (a) information that is in the public domain, and
 - (b) information that is in the person’s custody or under the person’s control.
- (8) The CAA may treat a request under subsection (5) in respect of an area as if it were—
- (a) a number of requests in respect of different parts of that area, or
 - (b) a request in respect of an area that includes all of that area.

12 Publication of operator determinations

- (1) As soon as practicable after making an operator determination the CAA must—
- (a) publish a notice of the determination, and
 - (b) send a copy of the notice to each person listed in subsection (2).
- (2) Those persons are—

- (a) the person in respect of whom the determination was made, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) The notice of the determination must include the statement under section 11(2).
- (4) As soon as practicable after withdrawing an operator determination the CAA must –
 - (a) publish a notice of the withdrawal, and
 - (b) send a copy of the notice to each person listed in subsection (2).
- (5) If a notice under subsection (1) or (4) does not include the CAA’s reasons for the determination or withdrawal, the CAA must as soon as practicable after publishing the notice –
 - (a) publish its reasons, and
 - (b) send a copy of them to each person listed in subsection (2).

13 Advance determinations

- (1) The CAA may make a market power determination or an operator determination based entirely or partly on circumstances that have not arisen at the time the determination is made.
- (2) The CAA must specify the circumstances in the determination.
- (3) The CAA may make a determination in reliance on subsection (1) only if it considers that the specified circumstances are likely to arise.
- (4) Sections 9 and 12 do not require the CAA to publish or send a copy of a notice of a determination made in reliance on subsection (1), or reasons for such a determination, at a time when –
 - (a) the circumstances specified in the determination have not arisen, and
 - (b) it considers that doing so would involve disclosing commercially sensitive information.
- (5) If notice of a market power determination made in reliance on subsection (1) is published before the circumstances specified in the determination arise, an airport area or airport is not dominant by virtue of the determination until those circumstances arise.
- (6) If notice of an operator determination made in reliance on subsection (1) is published before the circumstances specified in the determination arise, a person is not to be treated as having or not having overall responsibility for the management of an airport area by virtue of the determination until those circumstances arise.

14 Appeals against determinations

Schedule 1 (appeals against determinations) has effect.

Licences

15 Application for licence

- (1) An application for a licence –

- (a) must be made in the specified form and manner,
 - (b) must contain or be accompanied by the specified information, and
 - (c) must be published by the applicant in the specified form and manner and within a period notified to the applicant by the CAA.
- (2) On an application made and published in accordance with subsection (1), the CAA must—
 - (a) grant the licence (see section 16), or
 - (b) refuse to grant the licence (see section 17),unless the application is withdrawn.
- (3) The CAA must publish a copy of—
 - (a) each licence granted, and
 - (b) each notice of a decision to refuse to grant a licence.
- (4) Subsection (5) applies if a person who is the operator of an airport area does not have a licence in respect of the area on the day on which the area becomes a dominant area located at a dominant airport or part of such an area.
- (5) The person is to be treated as having made and published an application for such a licence in accordance with subsection (1).
- (6) In subsection (1) “specified” means specified by the CAA.
- (7) The CAA must publish a copy of the matters specified for the purposes of subsection (1).

16 Granting licence

- (1) Before granting a licence the CAA must—
 - (a) publish a notice in relation to the proposed licence,
 - (b) send a copy of the notice to the persons listed in subsection (2), and
 - (c) consider any representations about the proposal to grant the licence, including the proposed conditions, that are made in the period specified in the notice (and not withdrawn).
- (2) Those persons are—
 - (a) the applicant for the licence, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) A notice under subsection (1) must—
 - (a) state that the CAA proposes to grant the licence to the applicant,
 - (b) specify the airport area for which it is to be granted,
 - (c) specify the airport at which the area is located,
 - (d) specify the conditions proposed to be included in the licence,
 - (e) give the CAA’s reasons for the proposed conditions, and
 - (f) specify a reasonable period for making representations.
- (4) The CAA may withdraw a notice under subsection (1) at any time.
- (5) If, after complying with subsections (1) to (3) in relation to a licence, the CAA decides to grant the licence, it must—
 - (a) publish a notice in relation to the licence, and
 - (b) send a copy of the notice to the persons listed in subsection (2).

- (6) The CAA is not to be treated as having complied with subsections (1) to (3) in relation to a licence granted to an applicant for an area if the conditions included in the licence when it is granted differ significantly from the conditions proposed in the notice under subsection (1) relating to the applicant and the area (or, if more than one, the latest such notice).
- (7) A notice under subsection (5) must –
 - (a) specify the date from which the licence comes into force (subject to section 21(5)),
 - (b) specify the airport area for which the licence is granted,
 - (c) specify the airport at which the area is located,
 - (d) specify the licence conditions,
 - (e) give the CAA’s reasons for the conditions,
 - (f) state how it has taken account of any representations made in the period specified in the notice under subsection (1), and
 - (g) state the reason for any differences between the conditions included in the licence and those proposed in the notice under subsection (1).
- (8) The date specified under subsection (7)(a) must be a date falling after the end of the period of 6 weeks beginning with the day on which the notice under subsection (5) was published.

17 Refusing to grant licence

- (1) The CAA may by notice refuse to grant a licence for an airport area if –
 - (a) the CAA considers that the applicant is not the operator of the area and is not likely to become the operator of the area,
 - (b) the area is not a dominant area (or part of a dominant area) and the CAA considers that it is not likely to become a dominant area (or part of a dominant area),
 - (c) the airport at which the area is located is not a dominant airport and the CAA considers that it is not likely to become a dominant airport,
 - (d) the applicant is a person falling within subsection (2), or
 - (e) the applicant is connected to a person falling within subsection (2).
- (2) A person falls within this subsection if –
 - (a) the person has previously held a licence in respect of the airport area that is the subject of the application or an area that included all or part of that airport area, and
 - (b) the licence was revoked in accordance with a relevant provision of the licence.
- (3) For the purposes of subsection (2)(b) a provision is a relevant provision of the licence if it states that revocation of the licence entirely or partly in reliance on that provision is relevant for the purposes of this section.
- (4) Before refusing to grant a licence, the CAA must –
 - (a) publish a notice in relation to the proposed refusal,
 - (b) send a copy of the notice to the persons listed in subsection (5), and
 - (c) consider any representations about the proposed refusal that are made in the period specified in the notice (and not withdrawn).
- (5) Those persons are –
 - (a) the applicant for the licence, and

- (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) The notice must –
 - (a) state that the CAA proposes to refuse to grant the licence,
 - (b) specify the airport area in respect of which the application was made,
 - (c) specify the airport at which the area is located, and
 - (d) give the CAA’s reasons for the proposed refusal.
- (7) The period specified in the notice must be a period of not less than 30 days beginning with the day on which the notice is published.
- (8) The CAA may withdraw a notice under subsection (4) at any time.

Licence conditions etc

18 Licence conditions

- (1) A licence may include –
 - (a) such conditions as the CAA considers necessary or expedient having regard to the risk that the holder of the licence may engage in conduct that amounts to an abuse of substantial market power, and
 - (b) such other conditions as the CAA considers necessary or expedient having regard to its duties under section 1, subject to subsections (4) to (6).
- (2) Such conditions may, in particular, include –
 - (a) provision for a condition to have effect or cease to have effect at times or in circumstances specified in, or determined in accordance with, a condition,
 - (b) provision requiring the holder of the licence to enter into a contract or other arrangement for a purpose specified in a condition and on terms specified in, or determined in accordance with, a condition,
 - (c) provision requiring the holder of the licence to comply with requirements imposed (by directions or otherwise) by a specified person,
 - (d) provision requiring the holder of the licence to do or not to do things specified, or of a description specified, in the licence unless a specified person consents to it not doing or doing those things,
 - (e) provision requiring the holder of the licence to refer a matter to a specified person for approval or determination, and
 - (f) provision relating to activities carried on outside the airport area for which the licence is granted.
- (3) In subsection (2) the references to a specified person are to –
 - (a) a person specified, or of a description specified, in a condition for the purpose concerned, and
 - (b) a person nominated for the purpose concerned by a person within paragraph (a).
- (4) A licence condition may include provision for its modification only if it specifies or describes –
 - (a) the circumstances in which it may be modified,
 - (b) the types of modification that may be made, and

- (c) the period or periods in which it may be modified.
- (5) If a licence condition includes such provision, it may be modified in accordance with that provision or in accordance with the provision made by this Chapter about modifying licence conditions.
- (6) Where a licence condition is subject to an exception (however expressed) relating to, or operating by reference to, financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before section 4 came into force, the licence may not –
 - (a) provide for the exception to cease to have effect at times or in circumstances specified in, or determined in accordance with, a licence condition, or
 - (b) provide for the CAA to determine which financial arrangements benefit from the exception.
- (7) A licence condition does not have effect at a time when –
 - (a) the holder of the licence is not the operator of any part of the airport area for which the licence is granted, or
 - (b) that airport area is not a dominant area located at a dominant airport (or part of such an area) and does not include all or part of such an area, and provision included in a licence under subsection (2)(a) has effect subject to this subsection.
- (8) Section 7(8) applies for the purposes of subsection (1)(a) of this section as it applies for the purposes of test B in that section.

19 Licence conditions: price control

- (1) A licence must include such price control conditions as the CAA considers necessary or expedient having regard to its duties under section 1.
- (2) A licence that includes a price control condition must include conditions specifying a period or periods for which the price control condition has effect.
- (3) For the purposes of this Part a licence condition is a price control condition to the extent that it regulates prices by –
 - (a) providing that the amount, or the maximum amount, that may be charged is an amount specified in, or determined in accordance with, the condition, or
 - (b) requiring the amount charged to be approved by the CAA.
- (4) A price control condition may make provision –
 - (a) by reference to the amount charged for particular goods or services;
 - (b) by reference to the overall amount charged for a range of goods or services.
- (5) Subsection (1) has effect subject to –
 - (a) the provision in this Chapter about the conditions that may be included in a licence when it is granted, and
 - (b) the provision in the licence and in this Chapter about modifying conditions.

20 Licence conditions: charges

- (1) A licence may, in particular, include conditions requiring the payment to the CAA of charges determined under a scheme or regulations made under section 11 of the Civil Aviation Act 1982 in respect of the carrying out of the CAA's functions under this Chapter.
- (2) Such conditions may require the payment of charges on the grant of the licence or while it continues in force (or both).
- (3) The inclusion of such conditions does not prevent the CAA recovering charges mentioned in subsection (1) as a debt due to it.

21 Licence area and licence period etc

- (1) A licence must include provision specifying –
 - (a) the airport area for which it is granted, and
 - (b) the airport at which the area is located.
- (2) The specified area may consist of two or more separate areas if they form part of the same airport.
- (3) A licence must –
 - (a) include provision about the circumstances in which it may be revoked by the CAA, and
 - (b) provide that it may be revoked only in accordance with section 46.
- (4) References in this Part to licence conditions –
 - (a) do not include provision mentioned in subsection (1), but
 - (b) include provision mentioned in subsection (3), except in section 18(7).
- (5) If the CAA grants a licence to a person in respect of an airport area at a time when the person is not the operator of any part of the area, the licence does not come into force until the person becomes the operator of all or part of the area.
- (6) A licence continues in force until it is revoked in accordance with its provisions.
- (7) A licence is not valid unless it is in writing.
- (8) A licence is not transferable.

Modifying licences

22 Modifying licence conditions and licence area

- (1) The CAA may modify a licence by modifying –
 - (a) the licence conditions, or
 - (b) the area for which the licence is granted,subject to section 23.
- (2) Before modifying a licence in reliance on this section, the CAA must –
 - (a) publish a notice in relation to the proposed modification,
 - (b) send a copy of the notice to the persons listed in subsection (3), and
 - (c) consider any representations about the proposed modification that are made in the period specified in the notice (and not withdrawn).

- (3) Those persons are –
 - (a) the holder of the licence, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (4) The notice under subsection (2) must –
 - (a) state that the CAA proposes to modify the licence,
 - (b) specify the proposed modification,
 - (c) give the CAA’s reasons for the proposed modification,
 - (d) state the effect of the proposed modification, and
 - (e) specify a reasonable period for making representations.
- (5) If, after publishing the notice under subsection (2), the CAA decides not to modify the licence in reliance on this section, the CAA must –
 - (a) publish a notice, giving its reasons, and
 - (b) send a copy of the notice to the persons listed in subsection (3).
- (6) If, after complying with subsections (2) to (4) in relation to a modification, the CAA decides to modify the licence in reliance on this section, the CAA must –
 - (a) publish a notice in relation to the modification, and
 - (b) send a copy of the notice to the persons listed in subsection (3).
- (7) The CAA is not to be treated as having complied with subsections (2) to (4) in relation to a modification of a licence if the modification differs significantly from the modification proposed in the notice under subsection (2).
- (8) The notice under subsection (6) must –
 - (a) specify the modification,
 - (b) specify the date from which the modification has effect (subject to paragraphs 5 and 8 to 10 of Schedule 2),
 - (c) give the CAA’s reasons for the modification,
 - (d) state the effect of the modification,
 - (e) state how it has taken account of any representations made in the period specified in the notice under subsection (2), and
 - (f) state the reason for any differences between the modifications and those set out in the notice given under subsection (2).
- (9) In the case of a modification of a licence condition, the date specified under subsection (8)(b) must fall after the end of the period of 6 weeks beginning with the day on which the notice under subsection (6) was published.

23 Restriction on power to modify

- (1) This section applies where –
 - (a) a licence condition is subject to an exception (however expressed) relating to, or operating by reference to, financial arrangements specified or described in the licence,
 - (b) the financial arrangements were entered into by the holder of the licence, or a person connected to the holder of the licence, before section 4 came into force, and
 - (c) the CAA proposes to modify the licence by removing or restricting the exception.
- (2) The CAA may not make such a modification unless it has determined that –

- (a) there has been a material change of circumstances since the day on which the exception was included in the licence condition, and
 - (b) for users of air transport services, the benefits of the modification are likely to outweigh any adverse effects.
- (3) On or before the day on which it gives notice under section 22(2) in respect of a proposal to make such a modification, the CAA must publish a notice of its determination under subsection (2) of this section, giving its reasons for the determination.
 - (4) For the purposes of subsection (1)(b), financial arrangements entered into after section 4 came into force but pursuant to other financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before that time are to be treated as entered into before that time.
 - (5) In subsection (2) “material change of circumstances” includes a material change in the terms of the financial arrangements.

Appeals against licence conditions etc

24 Appeal to Competition Commission: conditions of new licences

- (1) An appeal lies to the Competition Commission against a decision by the CAA under section 16 to include, or not to include, a condition in a licence when it is granted.
- (2) An appeal may be brought under this section only by –
 - (a) the holder of the licence, or
 - (b) a provider of air transport services whose interests are materially affected by the decision.
- (3) An appeal may be brought under this section only with the permission of the Competition Commission.
- (4) An application for permission to appeal under this section may be made only by a person who, if permission is granted, will be entitled to bring the appeal.
- (5) The Competition Commission may refuse permission to appeal only on one of the following grounds –
 - (a) that the appeal is brought for reasons that are trivial or vexatious, or
 - (b) that the appeal does not have a reasonable prospect of success.

25 Appeal to Competition Commission: modification of licence conditions

- (1) An appeal lies to the Competition Commission against a decision by the CAA to modify a licence condition under section 22.
- (2) An appeal may be brought under this section only by –
 - (a) the holder of the licence, or
 - (b) a provider of air transport services whose interests are materially affected by the decision.
- (3) An appeal may be brought under this section only with the permission of the Competition Commission.

- (4) An application for permission to appeal under this section may be made only by a person who, if permission is granted, will be entitled to bring the appeal.
- (5) The Competition Commission may refuse permission to appeal only on one of the following grounds –
 - (a) that the appeal is brought for reasons that are trivial or vexatious, or
 - (b) that the appeal does not have a reasonable prospect of success.

26 Determination of appeal

The Competition Commission may allow an appeal under section 24 or 25 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 the decision was based on the wrong exercise of a discretion.

27 Determination of appeal: decision appealed against

- (1) Where it does not allow an appeal under section 24 or 25, the Competition Commission must confirm the decision appealed against.
- (2) Where it allows an appeal under section 24 or 25, the Competition Commission must do one or more of the following –
 - (a) quash the decision appealed against;
 - (b) remit the matter that is the subject of the decision appealed against to the CAA for reconsideration and decision in accordance with any directions given by the Commission;
 - (c) substitute its own decision for that of the CAA.
- (3) Where it allows only part of an appeal under section 24 or 25 –
 - (a) subsection (2) applies in relation to the part of the decision appealed against in respect of which the appeal is allowed, and
 - (b) subsection (1) applies in relation to the rest of that decision.
- (4) Where the Competition Commission substitutes its own decision for that of the CAA –
 - (a) the Commission may give directions to the persons listed in subsection (5),
 - (b) the Commission’s decision has effect as if it were made by the CAA, except that an appeal may not be brought against it under section 24 or 25, and
 - (c) any modification of a licence effected by the decision takes effect from the date specified by the Commission.
- (5) Those persons are –
 - (a) the CAA,
 - (b) the holder of the licence, and
 - (c) if the appeal was brought by someone other than the holder of the licence, the appellant.
- (6) The Competition Commission must not give a direction under this section that requires a person to do anything that the person would not have power to do apart from the direction.

- (7) A person to whom a direction is given under this section must comply with it.
- (8) A direction given under this section to a person other than the CAA is enforceable –
 - (a) in England and Wales and Northern Ireland, as if it were an order of the High Court, and
 - (b) in Scotland, as if it were an order of the Court of Session.

28 Determination of appeal: time limits

- (1) The Competition Commission must determine an appeal under section 24 or 25 in respect of a licence within the period of 24 weeks beginning with the day on which the relevant notice was published, subject to subsections (3) to (6).
- (2) In subsection (1) “the relevant notice” means –
 - (a) in the case of an appeal under section 24, the notice published in accordance with section 16 of the decision to grant the licence, and
 - (b) in the case of an appeal under section 25, the notice published in accordance with section 22 of the decision to modify the licence.
- (3) The Competition Commission may extend the appeal period by not more than 8 weeks if it is satisfied that there are good reasons for doing so.
- (4) The Competition Commission may only extend the appeal period once in reliance on subsection (3).
- (5) The Competition Commission may extend the appeal period by such period as it considers appropriate if –
 - (a) there is an appeal to the Competition Appeal Tribunal under this Chapter which the Commission considers may be relevant to the appeal under section 24 or 25, and
 - (b) the appeal to the Tribunal has not been determined or withdrawn.
- (6) The Competition Commission may extend the appeal period more than once in reliance on subsection (5).
- (7) If the Competition Commission extends the appeal period it must –
 - (a) publish a notice stating the new time limit for determining the appeal, and
 - (b) send a copy of the notice to the persons listed in subsection (8).
- (8) Those persons are –
 - (a) the holder of the licence which is the subject of the appeal,
 - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,
 - (c) such bodies representing airport operators or providers of air transport services as the Competition Commission considers appropriate, and
 - (d) the CAA.
- (9) The Secretary of State may by regulations modify the periods of time specified in this section.
- (10) In this section “the appeal period”, in relation to an appeal under section 24 or 25, means the period allowed for determining the appeal.

29 Determination of appeal: publication etc

- (1) A determination made by the Competition Commission on an appeal under section 24 or 25 –
 - (a) must be contained in an order made by the Commission, and
 - (b) takes effect at the time specified in the order or determined in accordance with the order.
- (2) The order must set out the reasons for the determination.
- (3) The Competition Commission must –
 - (a) publish the order as soon as reasonably practicable after the determination is made, and
 - (b) send a copy of the order to the persons listed in subsection (4).
- (4) Those persons are –
 - (a) the holder of the licence which is the subject of the appeal,
 - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,
 - (c) such bodies representing airport operators or providers of air transport services as the Competition Commission considers appropriate, and
 - (d) the CAA.
- (5) The Competition Commission may exclude from publication under subsection (3) any information which it is satisfied is –
 - (a) commercial information, the disclosure of which would, or might in the Commission’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the Commission’s opinion, significantly harm the individual’s interests.
- (6) The CAA must take such steps as it considers requisite for it to comply with the order.
- (7) The steps must be taken –
 - (a) if a time is specified in the order or is to be determined in accordance with the order, within that time, and
 - (b) otherwise, within a reasonable time.

30 Procedure on appeals

- (1) Subsections (1), (2) and (5) of section 1 apply to the carrying out by the Competition Commission of the functions listed in subsection (3) as they apply to the carrying out by the CAA of its functions under this Chapter.
- (2) In carrying out the functions listed in subsection (3) the Competition Commission must have regard to the matters mentioned in section 1(3) and (4).
- (3) Those functions are –
 - (a) determining an application for permission to appeal under section 24 or 25, and
 - (b) determining an appeal under section 24 or 25, including taking decisions and giving directions described in section 27.
- (4) Schedule 2 (appeals under sections 24 and 25) has effect.

- (5) The functions of the Competition Commission listed in subsection (3) are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out).

Enforcement of licence conditions

31 Contravention notice

- (1) The CAA may give a notice under this section (a “contravention notice”) to a person if it has reasonable grounds for believing that the person is contravening, or has contravened, a licence condition.
- (2) A contravention notice must—
- (a) specify the condition and contravention in respect of which it is given,
 - (b) explain the action that the CAA may take under this Chapter in connection with the contravention, and
 - (c) explain that representations may be made about the matters in the notice in the period specified in the notice.
- (3) The CAA must specify a period of not less than 30 days beginning with the day on which the contravention notice is given, subject to subsection (4).
- (4) The CAA may specify a shorter period in a contravention notice given in respect of a repeated contravention.
- (5) A contravention notice is given to a person in respect of a repeated contravention if, in the period of 2 years ending with the day on which the notice is given, the CAA did one or more of the following in respect of a contravention by the person of the same condition—
- (a) gave the person a contravention notice;
 - (b) gave the person an enforcement order;
 - (c) gave the person an urgent enforcement order;
 - (d) imposed a penalty on the person under section 39 or 40.
- (6) The CAA may extend the period specified in a contravention notice given to a person on one or more occasions by giving notice to that person.
- (7) The CAA may withdraw a contravention notice given to a person at any time by giving notice to that person, including of its reasons for doing so.
- (8) As soon as practicable after giving a notice under subsection (1), (6) or (7), the CAA must—
- (a) publish the notice, and
 - (b) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (9) A contravention notice given in respect of a contravention that is or was a continuing contravention must specify the period of contravention in respect of which it is given.
- (10) In this Part “representation period”, in connection with a contravention notice, means—
- (a) the period specified in the contravention notice for making representations, or

- (b) where the period has been extended in accordance with subsection (6), the extended period.

(11) This section has effect subject to section 32.

32 Restrictions on giving contravention notices

- (1) If the CAA gives a person a contravention notice or an urgent enforcement order in respect of a contravention, it may not subsequently give the person a contravention notice in respect of the same contravention.
- (2) Subsection (1) does not apply if—
 - (a) the CAA withdraws the first contravention notice without imposing a penalty on the person under section 39, or
 - (b) the CAA revokes the urgent enforcement order without imposing a penalty on the person under section 40.
- (3) Subsection (1) does not prevent the CAA giving a person more than one contravention notice, or a contravention notice and an urgent enforcement order, in respect of—
 - (a) contraventions of the same condition in different ways, or
 - (b) contraventions of the same condition at different times or during different periods.

33 Enforcement order

- (1) The CAA may give an order under this section (an “enforcement order”) to a person if—
 - (a) it has given the person a contravention notice (and has not withdrawn it),
 - (b) the representation period has ended,
 - (c) it has considered any representations made about the matters in the contravention notice before the end of that period (and not withdrawn), and
 - (d) subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if the CAA has determined that the person is contravening a condition specified in the contravention notice in one or more of the ways specified in the notice.
- (3) This subsection is satisfied if the CAA has determined that the person—
 - (a) has contravened a condition specified in the contravention notice in one or more of the ways specified in the notice, and
 - (b) did not, before the end of the representation period, take all of the appropriate steps mentioned in subsection (6)(b).
- (4) An enforcement order must—
 - (a) specify the condition and contravention in respect of which it is given,
 - (b) require the person to take such of the appropriate steps as are specified in the order,
 - (c) specify a reasonable period within which the steps must be taken, and
 - (d) give the CAA’s reasons for giving the order.
- (5) As soon as practicable after giving an enforcement order, the CAA must—
 - (a) publish the order, and

- (b) send a copy of the order to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) In this section “the appropriate steps”, in relation to a contravention of a condition, means the steps that the CAA has determined are appropriate –
 - (a) for complying with the condition, and
 - (b) for remedying the consequences of the contravention.

34 Enforcement order: modification and revocation

- (1) The CAA may –
 - (a) modify an enforcement order with the agreement of the person to whom it was given, or
 - (b) revoke an enforcement order.
- (2) Before modifying or revoking the order, the CAA must –
 - (a) publish a notice in relation to the proposed modification or revocation,
 - (b) send a copy of the notice to the person to whom the order was given, and
 - (c) consider any representations made about the proposal in the period specified in the notice (and not withdrawn).
- (3) The notice under subsection (2) must –
 - (a) state that the CAA proposes to modify or revoke the order,
 - (b) specify the proposed modification (if relevant),
 - (c) give the CAA’s reasons for the modification or revocation, and
 - (d) specify a reasonable period for making representations.
- (4) As soon as practicable after modifying or revoking an enforcement order, the CAA must –
 - (a) publish a notice giving details of the modification or revocation, and
 - (b) send a copy of the notice to the persons listed in subsection (5).
- (5) Those persons are –
 - (a) the person to whom the enforcement order was given, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

35 Urgent enforcement order

- (1) The CAA may give an order under this section (an “urgent enforcement order”) to a person if subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if the CAA has reasonable grounds for believing that –
 - (a) the person is contravening, or has contravened, a licence condition,
 - (b) the contravention has resulted in, or creates an immediate risk of, a serious economic or operational problem for users of air transport services, for a class of user of such services or for a relevant service provider, and
 - (c) it is appropriate to give the urgent enforcement order to prevent, remove or reduce that problem or risk.

- (3) This subsection is satisfied if the CAA has reasonable grounds for believing that—
 - (a) the person is likely to contravene a licence condition,
 - (b) the contravention is likely to result in, or create an immediate risk of, a problem described in subsection (2)(b), and
 - (c) it is appropriate to give the urgent enforcement order to prevent, or reduce the likelihood of, that problem or risk arising.
- (4) An urgent enforcement order must—
 - (a) specify the condition and contravention in respect of which it is given,
 - (b) require the person to take such of the appropriate steps as are specified in the order,
 - (c) specify a reasonable period within which the steps must be taken, and
 - (d) give the CAA’s reasons for giving the order.
- (5) As soon as practicable after giving an urgent enforcement order, the CAA must—
 - (a) publish the order, and
 - (b) send a copy of the order to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) In this section “the appropriate steps” means—
 - (a) in relation to a contravention of a condition that has occurred or is occurring, the steps that the CAA has determined are appropriate—
 - (i) for complying with the condition, and
 - (ii) for remedying the consequences of the contravention, and
 - (b) in relation to a contravention of a condition that is likely to occur, the steps that the CAA has determined are appropriate for securing that the contravention does not occur.
- (7) In this section “relevant service provider” means a person, other than the person to whom the urgent enforcement order is to be given, who provides services at the airport at which, or in connection with which, the contravention occurred, is occurring or is likely to occur.

36 Urgent enforcement order: confirmation

- (1) As soon as practicable after giving an urgent enforcement order, the CAA must—
 - (a) confirm the order, or
 - (b) revoke the order (see section 37).
- (2) The CAA may confirm an urgent enforcement order with or without modifications.
- (3) The CAA may confirm an urgent enforcement order given in reliance on section 35(2) only if it has determined that—
 - (a) the person is contravening, or has contravened, a licence condition specified in the order in one or more of the ways specified in the order,
 - (b) the contravention has resulted in, or creates an immediate risk of, a problem described in section 35(2)(b), and
 - (c) it is appropriate to confirm the urgent enforcement order, with any modifications, to prevent, remove or reduce that problem or risk.

- (4) The CAA may confirm an urgent enforcement order given in reliance on section 35(3) only if it has determined that –
 - (a) the person is likely to contravene a licence condition,
 - (b) the contravention is likely to result in, or create an immediate risk of, a problem described in section 35(2)(b), and
 - (c) it is appropriate to confirm the urgent enforcement order, with any modifications, in order to prevent, or reduce the likelihood of, that problem or risk arising.
- (5) Before confirming an urgent enforcement order, the CAA must –
 - (a) publish a notice in relation to the proposal to confirm the order,
 - (b) send a copy of the notice to the person to whom the order was given, and
 - (c) consider any representations made about the proposal in the period specified in the notice (and not withdrawn).
- (6) The notice under subsection (5) must –
 - (a) state that the CAA proposes to confirm the order,
 - (b) specify any proposed modifications of the order,
 - (c) give the CAA’s reasons for confirming the order and for any modifications, and
 - (d) specify a reasonable period for making representations.
- (7) As soon as practicable after confirming an urgent enforcement order, the CAA must –
 - (a) publish a notice giving details of the confirmation, including any modifications of the order, and
 - (b) send a copy of the notice to the persons listed in subsection (8).
- (8) Those persons are –
 - (a) the person to whom the urgent enforcement order was given, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

37 Urgent enforcement order: modification and revocation

- (1) The CAA may –
 - (a) modify an urgent enforcement order with the agreement of the person to whom it was given, or
 - (b) revoke an urgent enforcement order.
- (2) Before modifying or revoking the order, the CAA must –
 - (a) publish a notice in relation to the proposed modification or revocation,
 - (b) send a copy of the notice to the person to whom the order was given, and
 - (c) consider any representations made about the proposal in the period specified in the notice (and not withdrawn).
- (3) The notice under subsection (2) must –
 - (a) state that the CAA proposes to modify or revoke the order,
 - (b) specify the proposed modification (if relevant),
 - (c) give the CAA’s reasons for the modification or revocation, and
 - (d) specify a reasonable period for making representations.

- (4) As soon as practicable after modifying or revoking an urgent enforcement order, the CAA must –
 - (a) publish a notice giving details of the modification or revocation, and
 - (b) send a copy of the notice to the persons listed in subsection (5).
- (5) Those persons are –
 - (a) the person to whom the urgent enforcement order was given, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (6) Nothing in this section restricts, or applies in relation to the exercise of, the CAA’s power under section 36 to modify an urgent enforcement order when confirming the order.

38 Civil proceedings

- (1) A person who is given an enforcement order must comply with it (unless it is revoked).
- (2) The obligation to comply with an enforcement order is a duty owed to every person who may be affected by a contravention of a requirement of the order.
- (3) A person who is given an urgent enforcement order must comply with it, whether or not it has been confirmed (unless it is revoked).
- (4) The obligation to comply with an urgent enforcement order that has been confirmed is a duty owed to every person who may be affected by a contravention of a requirement of the order.
- (5) Where a duty is owed to a person under subsection (2) or (4), the following are actionable by the person –
 - (a) a breach of the duty that causes the person to sustain loss or damage, and
 - (b) an act that –
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done entirely or partly for achieving that result.
- (6) In proceedings brought against a person (“P”) by virtue of subsection (5)(a), it is a defence for P to show that P took all reasonable steps and exercised all due diligence to avoid contravening the requirements of the order.
- (7) The CAA may enforce the duties under subsections (1) and (3) in –
 - (a) civil proceedings for an injunction,
 - (b) civil proceedings in Scotland for an interdict or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) civil proceedings for any other appropriate remedy or relief.
- (8) Enforcement of a duty under subsection (1) or (3) by the CAA does not prejudice any rights that a person may have by virtue of subsection (5).

39 Penalty for contravention of licence condition

- (1) The CAA may impose a penalty on a person if –
 - (a) it has given the person a contravention notice (and has not withdrawn it),

- (b) the representation period has ended,
 - (c) it has considered any representations made about the matters in the contravention notice before the end of that period (and not withdrawn), and
 - (d) it has determined that the person is contravening, or has contravened, a licence condition specified in the notice in one or more of the ways specified in the notice.
- (2) If the contravention notice specifies more than one contravention, the CAA may impose a separate penalty under this section for each contravention.
- (3) If the contravention notice specifies more than one period of contravention, the CAA may impose a separate penalty under this section for each period.

40 Penalty for contravention of order

The CAA may impose a penalty on a person if it has determined that the person is contravening, or has contravened, a requirement of –

- (a) an enforcement order, or
- (b) an urgent enforcement order that has been confirmed.

41 Procedure before imposing penalty

- (1) Before imposing a penalty on a person under section 39 or 40 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 as soon as practicable to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate, and
 - (d) consider any representations made about the proposed penalty in the period specified in the notice (and not withdrawn).
- (2) A notice under subsection (1) must –
- (a) state that the CAA proposes to impose a penalty,
 - (b) state the proposed amount of the penalty,
 - (c) specify the relevant licence condition or requirement, and
 - (d) specify the act or omission that the CAA has determined constitutes a contravention of the condition or requirement.
- (3) In the case of a penalty calculated entirely or partly by reference to a daily amount (see section 43(2)), a notice under subsection (1) must specify –
- (a) the day on which daily amounts would begin to accumulate, and
 - (b) the day on which, or the circumstances in which, they would cease to accumulate.
- (4) The period specified in a notice under subsection (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.
- (5) Before varying the proposed amount of the 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 as soon as practicable to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate, and
 - (d) consider any representations made about the proposed variation in the period specified in the notice (and not withdrawn).
- (6) In the case of penalty calculated entirely or partly by reference to a daily amount (see section 43(2)), the reference in subsection (5) to varying the proposed amount of the penalty includes varying –
- (a) the day on which daily amounts would begin to accumulate, and
 - (b) the day on which, or circumstances in which, they would cease to accumulate.
- (7) The notice under subsection (5) must –
- (a) specify the proposed variation, and
 - (b) give the CAA’s reasons for the proposed variation.
- (8) The period specified in the notice under subsection (5) 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.
- (9) The CAA may withdraw a notice under subsection (1) or (5) at any time by giving notice to the person on whom it proposed to impose the penalty.
- (10) As soon as practicable after giving a notice under subsection (9), the CAA must –
- (a) publish the notice, and
 - (b) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

42 Procedure after imposing penalty

- (1) As soon as practicable after imposing a penalty under section 39 or 40 the CAA must –
- (a) give a notice to the person on whom the penalty is imposed,
 - (b) publish the notice, and
 - (c) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (2) The notice must –
- (a) state that the CAA has imposed the penalty,
 - (b) state the amount of the penalty,
 - (c) specify the relevant licence condition or requirement,
 - (d) specify the act or omission that the CAA has determined constitutes a contravention of the condition or requirement, and
 - (e) 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 calculated entirely or partly by reference to a daily amount, the notice must specify –
- (a) the day on which daily amounts begin to accumulate, and
 - (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, and
 - (c) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

43 Amount of penalty

- (1) The amount of a penalty imposed on a person under section 39 or 40 must be such amount as 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;
 - (b) a daily amount (see section 44).
- (3) A fixed amount must not exceed 10% of the person’s qualifying turnover for the qualifying period.
- (4) In determining the amount of a penalty, the CAA must have regard, in particular, to –
 - (a) any representations made to it in a period specified in a notice proposing the penalty given under section 41(1) or (5) (and not withdrawn),
 - (b) any steps taken by the person on whom the penalty is to be imposed towards complying with the licence condition or requirement specified in the notice, and
 - (c) any steps taken by that person towards remedying the consequences of the contravention of the condition or requirement.
- (5) A person’s qualifying turnover for a qualifying period is to be taken to be the qualifying turnover for that period as reported in regulatory accounts, unless regulations under subsection (8) provide otherwise.
- (6) In this section, for the purposes of a penalty imposed on a person (“P”) for a contravention of a licence condition or requirement –

“qualifying turnover” means the turnover of P, and persons connected to P, from activities carried on at the airport at which, or in connection with which, the contravention occurred or is occurring (“the qualifying airport”);

“the qualifying period” means –

 - (a) in the cases mentioned in subsection (7), the year ending with the relevant day (or, if shorter, the period ending with that day during which P was the operator of an area at the qualifying airport), and
 - (b) otherwise, the last regulatory year ending on or before the day on which the notice proposing the penalty is given under section 41(1) (“the notice day”);

“regulatory accounts” means accounts which P is required to prepare by a licence condition;

“regulatory year” means a year for which P was required to prepare accounts by a licence condition in respect of an area at the qualifying airport;

“the relevant day” means –

- (a) if P is the operator of an area at the qualifying airport on the notice day, that day, and
- (b) otherwise, the last day before the notice day on which P was the operator of such an area.

(7) Those cases are –

- (a) where P was not the operator of an area at the qualifying airport throughout the last regulatory year that ends on or before the notice day;
- (b) where there is no regulatory year or the last regulatory year ended more than 12 months before the notice day;
- (c) where P has not provided the CAA with accounts prepared in accordance with the licence for the last regulatory year that ends on or before the notice day.

(8) The Secretary of State may by regulations –

- (a) amend or otherwise modify the definition of qualifying turnover, and
- (b) make provision about how a person’s qualifying turnover for a qualifying period is to be calculated.

(9) The regulations may, in particular –

- (a) make provision about cases in which turnover is or is not to be treated as qualifying turnover for a qualifying period,
- (b) provide that a person’s qualifying turnover for a qualifying period is to be taken to be the qualifying turnover reported in accounts specified or described in the regulations, and
- (c) provide that a person’s qualifying turnover is to be calculated entirely or partly using accounting rules specified or described in the regulations.

44 Amount of penalty: daily amounts

- (1) In relation to a penalty under section 39 or 40, a daily amount is an amount payable where the contravention in respect of which the penalty is imposed continues after it is imposed.
- (2) A penalty under section 39 may not consist of or include a daily amount unless that contravention has been continuous since the end of the representation period for the contravention notice in which the contravention was specified.
- (3) A daily amount must not exceed 0.1% of the person’s qualifying turnover for the qualifying period.
- (4) A daily amount is payable in respect of each day in a period specified by the CAA in the notice under section 42 stating that it has imposed the penalty.
- (5) A specified period during which daily amounts accumulate must be such period as the CAA considers appropriate, subject to subsections (6) to (7).
- (6) The period must begin after the day on which the CAA gives the notice under section 42.

- (7) The period must end before –
- (a) the day on which the contravention specified in the notice under section 42 ceases, or
 - (b) if more than one contravention is specified in that notice, the day on which the last of those contraventions ceases.
- (8) In this section “qualifying turnover” and “qualifying period” have the same meaning as in section 43.

45 Appeals against orders and penalties

Schedule 3 (appeals against orders and penalties) has effect.

Revocation of licence

46 Revocation of licence

- (1) A licence may be revoked by the CAA by giving notice to the holder of the licence.
- (2) The CAA may give a notice revoking a licence only in circumstances specified in the licence in accordance with section 21.
- (3) Before revoking a licence, the CAA must –
 - (a) notify the holder of the licence that it intends to revoke the licence, giving its reasons, and
 - (b) give the holder of the licence an opportunity to make representations.
- (4) The CAA must not give notice revoking a licence before the end of the period of 30 days beginning with the day on which the CAA notifies the holder of the licence in accordance with subsection (3), unless the holder of the licence agrees otherwise.
- (5) A notice revoking a licence takes effect at the end of period specified in the notice (subject to paragraph 1(4) of Schedule 4).
- (6) The period specified in the notice must be a period of not less than 30 days beginning with the day on which the notice is given.
- (7) The CAA may extend the period specified in the notice at any time before the end of that period by giving notice to the holder of the licence.
- (8) The CAA may only extend the period once and only by up to 30 days.
- (9) The CAA may withdraw a notice revoking a licence at any time before it takes effect by giving a further notice to the holder of the licence.
- (10) A notice under subsection (1) or (9) must give the CAA’s reasons for revoking the licence or withdrawing a notice revoking the licence (as appropriate).
- (11) As soon as practicable after giving a notice under subsection (1), (7) or (9), the CAA must –
 - (a) publish the notice, and
 - (b) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

47 Appeals against revocation of licence

Schedule 4 (appeals against revocation of licences) has effect.

Obtaining information

48 Power to obtain information

- (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) The CAA may give a notice under this section only in respect of information or documents that it reasonably requires for the purpose of carrying out its functions under this Chapter.
- (3) The notice may require the information or document to be provided –
 - (a) at a time and place specified in the notice, and
 - (b) in a form and manner specified in the notice.
- (4) 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 appropriate court.
- (5) “The appropriate court” means –
 - (a) in relation to England and Wales and Northern Ireland, the High Court, and
 - (b) in relation to Scotland, the Court of Session.

49 Enforcement of information notice

- (1) If a person fails to comply with a notice under section 48 without reasonable excuse, the CAA may do either or both of the following –
 - (a) impose a penalty on the person;
 - (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 such amount as 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 such period as the CAA considers appropriate, subject to subsections (7) and (8).

- (7) The period must begin after the day on which the CAA gives the notice under section 52(1) 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 section 48.
- (9) The Secretary of State may by regulations replace the amount for the time being specified in subsection (4) or (5).

50 Penalty for providing false information, destroying documents etc

- (1) The CAA may impose a penalty on a person if, in relevant circumstances, the person provides information to the CAA that is false or misleading in a material respect and –
 - (a) the person knows that the information is false or misleading, or
 - (b) the person is reckless as to whether the information is false or misleading.
- (2) A person provides information in relevant circumstances if the person does so –
 - (a) in accordance with a licence condition,
 - (b) in response to a notice under section 48, or
 - (c) knowing that the CAA is likely to use the information for the purpose of carrying out its functions under this Chapter.
- (3) The CAA may impose a penalty on a person if the person intentionally alters, suppresses or destroys a document that the person is required to produce by a notice under section 48.
- (4) The amount of a penalty imposed on a person under this section must be such amount as the CAA determines to be –
 - (a) appropriate, and
 - (b) proportionate to the action in respect of which it is imposed.

51 Procedure before imposing penalty

- (1) Before imposing a penalty on a person under section 49 or 50 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 as soon as practicable to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate, and
 - (d) consider any representations made about the proposed penalty in the period specified in the notice (and not withdrawn).
- (2) The notice under subsection (1) must –
 - (a) state that the CAA proposes to impose a penalty,
 - (b) state the proposed amount of the penalty, and
 - (c) give the CAA’s reasons for imposing the penalty.
- (3) In the case of a penalty under section 49 calculated entirely or partly by reference to a daily amount, the notice under subsection (1) must specify –
 - (a) the day on which daily amounts would begin to accumulate, and

- (b) the day on which, or the circumstances in which, they would cease to accumulate.
- (4) The period specified in the notice under subsection (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.
- (5) Before varying the proposed amount of the 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 as soon as practicable to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate, and
 - (d) consider any representations made about the proposed variation in the period specified in the notice (and not withdrawn).
- (6) In the case of penalty calculated entirely or partly by reference to a daily amount, the reference in subsection (5) to varying the proposed amount of the penalty includes varying –
 - (a) the day on which daily amounts would begin to accumulate, and
 - (b) the day on which, or circumstances in which, they would cease to accumulate.
- (7) The notice under subsection (5) must –
 - (a) specify the proposed variation, and
 - (b) give the CAA’s reasons for the proposed variation.
- (8) The period specified in the notice under subsection (5) 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.
- (9) The CAA may withdraw a notice under subsection (1) or (5) at any time by giving notice to the person on whom it proposed to impose the penalty.
- (10) As soon as practicable after giving a notice under subsection (9), the CAA must –
 - (a) publish the notice, and
 - (b) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

52 Procedure after imposing penalty

- (1) As soon as practicable after imposing a penalty on a person under section 49 or 50, the CAA must –
 - (a) give a notice to the person on whom the penalty is imposed,
 - (b) publish the notice, and
 - (c) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (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, and

- (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 section 49 calculated entirely or partly by reference to a daily amount, the notice must specify –
 - (a) the day on which daily amounts begin to accumulate, and
 - (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, and
 - (c) send a copy of the notice to such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

53 Appeals against penalties

Schedule 5 (appeals against penalties: information) has effect.

Penalties

54 Imposing penalties

- (1) The CAA may not impose a penalty on a person under section 39, 40 or 49 for an act or omission if it has imposed a penalty on the person under one of those sections in respect of the same act or omission.
- (2) Subsection (1) does not prevent the CAA imposing more than one penalty on a person in respect of acts or omissions that take place at different times or over different periods.

55 Recovering penalties

- (1) This section applies if all or part of a penalty imposed on a person under this Chapter is not paid within the period specified in the notice given in respect of the penalty under –
 - (a) section 42, or
 - (b) section 52.
- (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 Chapter must be paid into the Consolidated Fund.

56 Statement of policy on penalties

- (1) The CAA must prepare and publish a statement of its policy with respect to—
 - (a) imposing penalties under this Chapter, 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, or determining the amount of a penalty, the CAA must have regard to the last statement of policy published before the act or omission in respect of which the penalty is to be imposed.
- (4) When preparing or revising a statement of policy, the CAA must consult such persons as it considers appropriate.

Disclosing information

57 Disclosing information

- (1) Nothing in this Chapter requires the CAA to publish or otherwise disclose any information which it is satisfied is—
 - (a) commercial information, the disclosure of which would, or might in the CAA’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CAA’s opinion, significantly harm the individual’s interests.
- (2) Schedule 6 (restrictions on disclosing information) has effect.

CHAPTER 2

COMPETITION

58 Functions under Part 4 of Enterprise Act 2002

- (1) The functions of the Office of Fair Trading (“the OFT”) specified in subsection (2) are to be concurrent functions of the CAA and the OFT.
- (2) Those functions are the OFT’s functions under Part 4 of the Enterprise Act 2002 (market investigations) so far as they relate to the provision of airport operation services, other than functions under sections 166 and 171.
- (3) References to the OFT in the following are to be read as including a reference to the CAA—
 - (a) Part 4 of the Enterprise Act 2002, other than sections 166 and 171, and
 - (b) provisions of that Act applied by that Part.
- (4) But subsection (3) applies—
 - (a) only so far as it is consequential on subsections (1) and (2), and
 - (b) only if the context does not otherwise require.

59 Enterprise Act 2002: supplementary

- (1) Before the Office of Fair Trading (“the OFT”) or the CAA first carries out functions specified in section 58(2) (“relevant 2002 Act functions”) in relation to a matter it must consult the other.
- (2) If the OFT or the CAA has carried out relevant 2002 Act functions in relation to a matter, the other must not carry out those functions in relation to that matter.
- (3) Subsections (4) to (6) apply if, in carrying out relevant 2002 Act functions, the CAA makes a reference to the Competition Commission.
- (4) The CAA must give the Competition Commission any information in the CAA’s possession or control—
 - (a) which is requested by the Commission for the purpose of the reference, or
 - (b) which the CAA considers it appropriate to give to the Commission for that purpose.
- (5) The CAA must give the Competition Commission any other assistance requested by the Commission for the purpose of the reference which it is within the CAA’s power to give.
- (6) In carrying out its investigation on the reference the Competition Commission must take account of any information given to it under subsection (4).
- (7) If a question arises as to whether a relevant 2002 Act function must or may be carried out by the CAA in relation to a particular case, the question must be referred to and determined by the Secretary of State.
- (8) No objection may be taken to anything done by or in relation to the CAA under Part 4 of the Enterprise Act 2002, other than section 166 or 171, on the ground that it should have been done by or in relation to the OFT.
- (9) Section 1 (CAA’s general duty) applies in relation to the carrying out by the CAA of relevant 2002 Act functions as it applies in relation to the carrying out by the CAA of its functions under Chapter 1.
- (10) In section 136(7) of the Enterprise Act 2002 (investigations and reports on market investigation references: relevant sectoral enactments), at the end of paragraph (g) insert “or section 58 of the Civil Aviation Act 2011;”.

60 Functions under Competition Act 1998

- (1) The functions of the Office of Fair Trading (“the OFT”) specified in subsection (2) are to be concurrent functions of the CAA and the OFT.
- (2) Those functions are the OFT’s functions under Part 1 of the Competition Act 1998 (competition) so far as they relate to anything which—
 - (a) is mentioned in subsection (3)(a) to (d), and
 - (b) relates to airport operation services,other than functions under sections 31D(1) to (6), 38(1) to (6) and 51.
- (3) Those things are—
 - (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
 - (b) conduct of the kind mentioned in section 18(1) of that Act,

- (c) agreements, decisions or concerted practices of the kind mentioned in Article 101 of the Treaty on the Functioning of the European Union, or
 - (d) conduct which amounts to abuse of the kind mentioned in Article 102 of that Treaty.
- (4) References to the OFT in Part 1 of the Competition Act 1998, other than in sections 31D(1) to (6), 38(1) to (6) and 51, are to be read as including a reference to the CAA.
- (5) But subsection (4) applies –
- (a) only so far as it is consequential on subsections (1) and (2), and
 - (b) only if the context does not otherwise require.

61 Competition Act 1998: supplementary

- (1) If a question arises as to whether a function specified in section 60(2) (a “relevant 1998 Act function”) must or may be carried out by the CAA in relation to a particular case, the question must be referred to and determined by the Secretary of State.
- (2) No objection may be taken to anything done by or in relation to the CAA under a provision of Part 1 of the Competition Act 1998, other than sections 31D(1) to (6), 38(1) to (6) and 51, on the ground that it should have been done by or in relation to the Office of Fair Trading.
- (3) The CAA may, when carrying out relevant 1998 Act functions, have regard to any matter in respect of which a duty is imposed by section 1(1) to (3), if it is a matter to which the Office of Fair Trading may have regard when carrying out relevant 1998 Act functions.
- (4) Section 4 of the Civil Aviation Act 1982 (CAA’s general objectives) does not apply in relation to the carrying out by the CAA of relevant 1998 Act functions.

62 Review etc of airport operation services

- (1) The CAA must, so far as it appears to it practicable to do so –
- (a) keep under review the provision of airport operation services in the United Kingdom and elsewhere, and
 - (b) collect information about the provision of such services in the United Kingdom and elsewhere,
- with a view to facilitating the carrying out of its functions under this Chapter.
- (2) The CAA must provide information, advice and assistance to the Secretary of State and the Office of Fair Trading (the “OFT”) regarding any matter in respect of which the CAA has a function under this Chapter if –
- (a) it thinks it expedient to do so, or
 - (b) it is asked by the Secretary of State or the OFT to do so.
- (3) Where the CAA provides information, advice or assistance under subsection (2)(b), the CAA may recover from the person who made the request a sum equal to any expense reasonably incurred by it in responding to the request.
- (4) The CAA may –
- (a) prepare reports relating to competition in markets for airport operation services, and
 - (b) arrange for such reports to be published.

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- (5) The CAA may exclude from publication under subsection (4)(b) any information which it is satisfied is –
- (a) commercial information, the disclosure of which would, or might in the CAA’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CAA’s opinion, significantly harm the individual’s interests.
- (6) For the purposes of carrying out its functions under this section the CAA may carry out, commission or provide financial or other support for research.

63 Power to modify CAA’s competition powers

- (1) The Secretary of State may by regulations modify sections 58(2) and 60(2) by providing that the functions of the Office of Fair Trading mentioned in those provisions –
- (a) do not include functions relating to the provision of particular airport operation services, or
 - (b) include functions relating to the provision of particular services at an airport that are not airport operation services.
- (2) The regulations may make consequential, incidental or supplemental provision amending this Chapter.

CHAPTER 3

GENERAL PROVISION

Interpretation

64 Airports

- (1) In this Part “airport” means an aerodrome within the meaning of the Civil Aviation Act 1982 together with other land, buildings and structures used for the purposes of –
- (a) the landing and taking off of aircraft at the aerodrome,
 - (b) the manoeuvring, parking or servicing of aircraft between landing and take-off at the aerodrome, including the supply of fuel,
 - (c) the arrival or departure of persons carried or to be carried as passengers by air transport services operating to or from the aerodrome, together with their baggage,
 - (d) the arrival or departure of cargo carried or to be carried by such services,
 - (e) the processing of such persons, baggage and cargo between their arrival and departure, and
 - (f) the arrival or departure of persons who work at the airport.
- (2) Section 65 makes further provision about what is and is not included in an airport for the purposes of this Part.

- (3) The Secretary of State may by regulations provide that, for the purposes of this Part, land, buildings and other structures specified in the regulations, or of a description specified in the regulations, are or are not –
 - (a) part of an airport, or
 - (b) part of the core area of an airport.
- (4) The regulations may, in particular –
 - (a) modify subsection (1)(a) to (f) and section 65, and
 - (b) modify the definition of the core area of an airport in section 6.
- (5) In this section “modify” includes amend or repeal.

65 Airports: supplementary

- (1) An airport includes, in particular –
 - (a) a passenger terminal,
 - (b) the forecourt of a passenger terminal,
 - (c) a qualifying car park,
 - (d) a cargo processing area,
 - (e) land, buildings and other structures used for air traffic services, and
 - (f) land, buildings and other structures used for the purposes of transferring passengers, baggage or cargo –
 - (i) between passenger terminals or cargo processing areas that form part of the airport, or
 - (ii) between such terminals or areas and aircraft using the airport, subject to the following provisions of this section.
- (2) The forecourt of a passenger terminal includes an area that –
 - (a) is used by road vehicles to pick up or drop off passengers using the terminal, and
 - (b) has pedestrian access to the terminal,other than a car park, bus station, tram station or railway station.
- (3) A car park is a qualifying car park if –
 - (a) it is part of a passenger terminal that forms part of the airport, or
 - (b) it has pedestrian access to such a terminal.
- (4) An airport does not include a hotel, unless it is situated in a passenger terminal that forms part of the airport.
- (5) An airport does not include a bus station, tram station or railway station.
- (6) For the purposes of section 64(1) and 66 when a person arrives at, or departs from, an airport other than in an aircraft the person’s arrival or departure takes place on arrival at or departure from –
 - (a) a passenger terminal that is part of the airport,
 - (b) the forecourt of such a terminal, or
 - (c) a qualifying car park that is part of the airport.
- (7) For the purposes of section 64(1) and 66 –
 - (a) when cargo arrives at an airport other than in an aircraft its arrival takes place when it is first unloaded from the vehicle in which it arrives, and

- (b) when cargo departs from an airport other than in an aircraft its departure takes place when it is loaded on to the vehicle in which it is to depart.

66 Airport operation services

- (1) In this Part “airport operation services” means services provided at an airport for the purposes of –
 - (a) the landing and taking off of aircraft,
 - (b) the manoeuvring, parking or servicing of aircraft, including the supply of fuel,
 - (c) the arrival or departure of passengers and their baggage,
 - (d) the arrival or departure of cargo,
 - (e) the processing of passengers, baggage or cargo between their arrival and departure, or
 - (f) the arrival or departure of persons who work at the airport.
- (2) “Airport operation services” include, in particular, the provision at an airport of –
 - (a) groundhandling services described in the Annex to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (as amended from time to time),
 - (b) facilities for car parking, and
 - (c) facilities for shops and other retail businesses.
- (3) “Airport operation services” do not include –
 - (a) air transport services,
 - (b) air traffic services,
 - (c) services provided in shops or as part of other retail businesses.
- (4) For the purposes of this Part –
 - (a) “airport operation services” include permitting a person to access or use land that forms part of an airport or facilities at an airport for a purpose described in subsection (1)(a) to (f), and
 - (b) a person who permits another to access or use land that forms part of an airport area, or facilities in an airport area, for such a purpose is to be treated as providing airport operation services in that area.
- (5) The Secretary of State may by regulations provide that, for the purposes of this Part, services are or are not to be treated as airport operation services.
- (6) The regulations may, in particular, modify subsections (1) to (4).
- (7) In this section “modify” includes amend or repeal.

67 Air transport services

- (1) In this Part –
 - “air transport service” means service for the carriage by air of passengers or cargo to or from an airport in the United Kingdom;
 - “user”, in relation to an air transport service, means a person who –
 - (a) is a passenger carried by the service, or
 - (b) has a right in property carried by the service.

- (2) In this Part references to users of air transport services include future users of such services.

68 Joint operators of airport areas

- (1) Two or more persons are joint operators of an airport area where they jointly have overall responsibility for the management of all of the area.
- (2) The Secretary of State may by regulations provide that, where there are joint operators of an airport area, the provisions of Chapters 1 and 3 of this Part (other than this section) apply in relation to the operators and the area with the modifications specified in the regulations.

69 Connected persons

- (1) For the purposes of this Part one person is connected with another if they are group undertakings in relation to each other.
- (2) “Group undertaking” has the same meaning as in the Companies Acts (see section 1161 of the Companies Act 2006).
- (3) The Secretary of State may by regulations make provision about when one person is connected with another for the purposes of this Part, including provision amending or otherwise modifying subsections (1) and (2).

70 Minor definitions

- (1) In this Part—
 - “air traffic services” has the same meaning as in Part 1 of the Transport Act 2000 (see section 98 of that Act);
 - “airport operator” means a person who is the operator of an area that consists of or forms part of the airport;
 - “the CAA” means the Civil Aviation Authority;
 - “cargo” includes mail;
 - “change of circumstances” includes the discovery that information is false or misleading in a material respect;
 - “contravention” includes a failure to comply and related expressions are to be interpreted accordingly;
 - “contravention notice” has the meaning given in section 31(1);
 - “document” means anything in which information is recorded;
 - “enforcement order” has the meaning given in section 33(1);
 - “international obligation of the United Kingdom” includes—
 - (a) an EU obligation, and
 - (b) an obligation that arises or may arise under an international agreement or arrangement to which the United Kingdom is a party;
 - “land” includes land covered by water;
 - “licence” means a licence under Chapter 1 of this Part and includes a licence which has been granted under section 16 but has not come into force;
 - “market power determination” has the meaning given in section 8(1);

“modifying”, in relation to a licence condition, means adding, removing or altering a licence condition and related expressions are to be interpreted accordingly;

“representation” includes objection;

“urgent enforcement order” has the meaning given in section 35(1).

- (2) References in this Part to providing a service, however expressed, include providing a facility (and related expressions are to be interpreted accordingly).
- (3) References in this Part to a building or other structure are to any building or structure, whether above or below ground.
- (4) References in this Part to notice, however expressed, are to notice in writing.
- (5) References in this Part to remedying the consequences of a contravention of a licence condition include paying an amount to a person –
 - (a) by way of compensation for loss or damage suffered by the person, or
 - (b) in respect of annoyance, inconvenience or anxiety suffered by the person.

71 Index of defined expressions

Schedule 7 (index of defined expressions) has effect.

Other general provision

72 Regulations

- (1) Regulations under this Part –
 - (a) may make different provision for different cases,
 - (b) may make provision generally or only for particular cases, and
 - (c) may make consequential, incidental, supplemental, transitional or saving provision.
- (2) Regulations under this Part are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under section 28(9) or paragraph 26 of Schedule 2 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing other regulations under this Part may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

73 Publication and production of documents

- (1) Where a person is required to publish something by this Part, the person must publish it in such form and manner as the person considers appropriate for bringing it to the attention of persons likely to be affected by it.
- (2) A person to whom a document is produced under this Part may take copies of the document.

74 Sending documents

- (1) A document required or authorised by this Part to be sent to a person may be sent –
 - (a) by delivering it to the person or by leaving it as the person’s proper address or by sending it by post to the person at that address,
 - (b) if the person is a body corporate, by sending it in accordance with paragraph (a) to the secretary of the body or to any other person authorised to receive the document on behalf of the body, or
 - (c) if the person is a partnership, by sending it in accordance with paragraph (a) to a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person to whom a document is to be sent is the person’s last known address, except that –
 - (a) if the person is a body corporate, it is the address of the registered or principal office of the body, and
 - (b) if the person is a partnership or a partner or a person having the control or management of the partnership business, it is the address of the principal office of the partnership.
- (3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (4) Subsection (5) applies if a person to whom a document is to be sent by another person under this Part has specified to that other person an address within the United Kingdom other than the proper address (as determined under subsection (2)) as the one to which documents of the same description as the document should be sent.
- (5) In relation to that document, that address must be treated as the person’s proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section, instead of that determined under subsection (2).
- (6) This section does not apply to a document if rules of court make provision about how or where it should be sent.
- (7) In this section references to sending include references to similar expressions (such as giving).

75 Consequential provision

- (1) Part 4 of the Airports Act 1986 (economic regulation of airports) is repealed.
- (2) Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) (economic regulation of airports) is revoked.

PART 2

OTHER AVIATION MATTERS

*Aviation security***76 Functions of CAA relating to aviation security**

(1) Part 2 of the Aviation Security Act 1982 (protection of civil aviation against acts of violence and other unlawful interference) is amended as follows.

(2) After section 14 insert –

“14A Review by CAA

(1) The CAA must keep under review the directions under sections 12 to 14 for the time being in force.

(2) The CAA must, when it considers it appropriate, make recommendations to the Secretary of State about those directions and about the giving of further directions under those sections.

(3) The CAA must make the recommendations in the form specified by the Secretary of State.”

(3) After section 16 insert –

“16A Directions requiring national security vetting

(1) This section applies where a direction under any of sections 12 to 14 makes provision requiring an individual who carries on, or wishes to carry on, an activity specified or described in the direction to be subject to national security vetting by the CAA.

(2) The CAA must make arrangements for carrying out that vetting, including –

- (a) arrangements for renewing and withdrawing clearance, and
- (b) arrangements for appeals.

(3) The Secretary of State may give directions to the CAA in connection with the arrangements, including directions as to –

- (a) steps to be included in the vetting process,
- (b) time limits for completing such steps, and
- (c) the period for which clearance is to remain valid.

(4) The CAA must comply with a direction given to it under this section.

(5) This section does not affect any other power relating to national security vetting.”

(4) In section 20A (aviation security services: approved providers) –

- (a) in subsection (2), for “provide for the Secretary of State to maintain a list of persons who are approved by him” substitute “provide for the CAA to maintain a list of persons who are approved by it”, and
- (b) in subsection (3)(i), after “functions” insert “on the CAA,”.

- (5) After section 21G insert –

“Advice and assistance

21H Duty to provide advice and assistance

- (1) The CAA must provide such advice and assistance to the persons listed in subsection (3) as it considers appropriate having regard to the purposes to which this Part of this Act applies.
- (2) The CAA may, in particular, provide advice and assistance to such persons in connection with measures that they are required to take by directions under sections 12 to 14.
- (3) Those persons are –
 - (a) managers of aerodromes in the United Kingdom,
 - (b) authorities responsible for air navigation installations in the United Kingdom,
 - (c) operators of aircraft registered or operating in the United Kingdom,
 - (d) persons occupying land forming part of an aerodrome or air navigation installation in the United Kingdom,
 - (e) persons permitted to have access to a security restricted area of such an aerodrome or air navigation installation for the purposes of carrying on a business, and
 - (f) any other persons carrying on activities at or in connection with such an aerodrome or air navigation installation, or considering doing so, who are of a description notified to the CAA by the Secretary of State for the purposes of this section.
- (4) The Secretary of State may provide such advice and assistance to the persons listed in subsection (3) as the Secretary of State considers appropriate having regard to –
 - (a) the purposes to which this Part of this Act applies, and
 - (b) any advice and assistance provided to those persons by the CAA.”
- (6) In section 24A(1) (interpretation) –
 - (a) for the definition of “authorised person” substitute –

““authorised person” means a person authorised in writing by the Secretary of State or the CAA for the purposes of this Part of this Act,” and
 - (b) after that definition insert –

““the CAA” means the Civil Aviation Authority,”.

- (7) After that section insert –

“24B Functions of CAA under this Part

- (1) The CAA must carry out the functions conferred on it by or under this Part of this Act with a view to achieving the purposes to which this Part of this Act applies.
- (2) If the CAA considers that there is a conflict between its duty under subsection (1) and its duties under section 4 of the Civil Aviation Act 1982 (CAA’s general objectives) it must –

- (a) consult the Secretary of State, and
 - (b) resolve the conflict in the manner directed by the Secretary of State,
- and doing so is to be treated for all purposes as compliance with subsection (1) of this section and section 4 of that Act.”

77 Power to modify functions of CAA etc relating to aviation security

In Part 2 of the Aviation Security Act 1982 (protection of civil aviation against acts of violence and other unlawful interference), after section 21H insert –

“21I Power to modify functions of CAA etc relating to aviation security

- (1) The Secretary of State may by regulations modify –
 - (a) the functions of the CAA relating to the purposes to which this Part of this Act applies, and
 - (b) the functions under this Part of this Act of persons authorised in writing by the CAA for the purposes of this Part.
- (2) Regulations under this section may, in particular –
 - (a) confer powers, or impose duties, on the CAA or persons mentioned in subsection (1)(b),
 - (b) remove or restrict powers or duties of the CAA or such persons,
 - (c) require the CAA to comply with directions given by the Secretary of State when carrying out a function conferred by the regulations,
 - (d) make different provision for different cases,
 - (e) amend, repeal or revoke an enactment or an instrument made under an enactment (whenever passed or made), including this Part of this Act, and
 - (f) include consequential, supplementary, incidental, transitional, transitory and saving provision.
- (3) The Secretary of State must consult the CAA before making regulations under this section.
- (4) The regulations must be made by statutory instrument.
- (5) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

78 Minor and consequential amendments

Schedule 8 (minor and consequential amendments) has effect.

79 Transfer schemes

- (1) The Secretary of State may make one or more schemes for the transfer to the Civil Aviation Authority (“the CAA”) of –
 - (a) rights, powers, duties and liabilities of the Crown in connection with individuals employed in the civil service of the Crown, and
 - (b) other property, rights and liabilities of the Crown.

- (2) A scheme may transfer only such property, rights, powers, duties and liabilities as the Secretary of State considers appropriate having regard to –
 - (a) the functions conferred on the CAA by or under Part 2 of the Aviation Security Act 1982 (as amended by sections 76 to 78 and Schedule 8), and
 - (b) the functions of persons authorised by the CAA for the purposes of that Part (as so amended).
- (3) Before making a scheme under this section the Secretary of State must consult the CAA.
- (4) Schedule 9 (further provision about transfer schemes) has effect.

Provision of information about aviation services

80 Information for benefit of users of air transport services

- (1) The CAA must publish, or arrange for the publication of, such information and advice as it considers appropriate for the purpose of assisting users of air transport services to compare relevant aviation services and facilities.
- (2) The CAA may publish guidance and advice with a view to improving the standard of relevant aviation services and facilities for users of air transport services.
- (3) The CAA must take such steps as it considers practicable to keep under review information, guidance and other advice that is published under this section by the CAA or by other persons.
- (4) Subsection (1) does not require the CAA to disclose, or arrange for the disclosure of, information if the CAA could refuse to disclose the information in response to a request made under the Freedom of Information Act 2000.
- (5) For the purposes of carrying out its functions under this section, the CAA may carry out, commission or provide financial or other support for research.
- (6) Information and advice published under subsection (1) by persons other than the CAA must be published in such form and manner as the CAA considers appropriate.
- (7) In this section –
 - “air transport service” means a service for the carriage by air of passengers or cargo to or from an airport in the United Kingdom;
 - “airport” has the same meaning as in Part 1 of this Act (see sections 64 and 65);
 - “relevant aviation services and facilities” means –
 - (a) air transport services provided to or from a civil airport,
 - (b) services and facilities provided at a civil airport in the United Kingdom, and
 - (c) services and facilities provided elsewhere in the United Kingdom and used, or likely to be used, in connection with the use of air transport services provided to or from a civil airport;
 - “user”, in relation to an air transport service, means a person who –
 - (a) is a passenger carried by the service, or
 - (b) has a right in property carried by the service.

- (8) In the definition of “relevant aviation services and facilities” in subsection (7) the references to a civil airport are to an airport other than a military airport.
- (9) In this section references to users of air transport services include potential users of such services.

81 Environmental information

- (1) The CAA must publish, or arrange for the publication of, such information and advice as it considers appropriate relating to—
 - (a) the environmental effects of civil aviation in the United Kingdom,
 - (b) how human health and safety is, or may be, affected by such effects, and
 - (c) measures taken, or to be taken, with a view to reducing, controlling or mitigating the adverse environmental effects of civil aviation in the United Kingdom.
- (2) The CAA may publish guidance and advice with a view to reducing, controlling or mitigating the adverse environmental effects of civil aviation in the United Kingdom.
- (3) The CAA must take such steps as it considers practicable to keep under review information, guidance and other advice that is published under this section by the CAA or by other persons.
- (4) Subsection (1) does not require the CAA to disclose, or arrange for the disclosure of, information if it could refuse to disclose the information in response to a request made under the Freedom of Information Act 2000.
- (5) For the purposes of carrying out its functions under this section, the CAA may carry out, commission or provide financial or other support for research.
- (6) Information and advice published under subsection (1) by persons other than the CAA must be published in such form and manner as the CAA considers appropriate.
- (7) In this section—
 - “civil aviation” means civil airports, associated facilities and aircraft using such airports;
 - “airport” has the same meaning as in Part 1 of this Act (see sections 64 and 65);
 - “civil airport” means an airport other than a military airport;
 - “associated facilities”, in relation to an airport, means facilities used, or intended to be used, in connection with the airport.
- (8) In this section references to the environmental effects of civil aviation include—
 - (a) substances, energy, noise, vibration or waste, including emissions, discharges and other releases into the environment,
 - (b) visual or other disturbance to the public,
 - (c) effects from works carried out at civil airports or associated facilities or in the construction of such airports or facilities, and
 - (d) effects from services provided at civil airports or associated facilities.

82 Power to obtain information

- (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) The CAA may give a notice under this section only in respect of information or documents that it reasonably requires for the purpose of carrying out its functions under section 80 or 81.
- (3) The notice may require the information or document to be provided –
 - (a) at a time and place specified in the notice, and
 - (b) in a form and manner specified in the notice.
- (4) 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 court.
- (5) “The appropriate court” means –
 - (a) in relation to England and Wales and Northern Ireland, the High Court, and
 - (b) in relation to Scotland, the Court of Session.
- (6) Schedule 6 (restrictions on disclosure of information) applies to information and documents provided to the CAA by virtue of this section as it applies to information obtained under or by virtue of Chapter 1 of Part 1.

83 Enforcement of information notice

- (1) If a person fails to comply with a notice under section 82 without reasonable excuse, the CAA may do either or both of the following –
 - (a) impose a penalty on the person;
 - (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 such amount as 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 £50,000.
- (5) A daily amount must not exceed £5,000.
- (6) A specified period during which daily amounts accumulate must be such period as the CAA considers appropriate, subject to subsections (7) and (8).
- (7) The period must begin after the day on which the CAA gives the notice under section 86 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 section 82.
- (9) The Secretary of State may by regulations replace the amount for the time being specified in subsection (4) or (5).
- (10) The regulations must be made by statutory instrument.
- (11) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

84 Penalty for providing false information, destroying documents etc

- (1) The CAA may impose a penalty on a person if, in relevant circumstances, the person provides information to the CAA that is false or misleading in a material respect and –
 - (a) the person knows that the information is false or misleading, or
 - (b) the person is reckless as to whether the information is false or misleading.
- (2) A person provides information in relevant circumstances if the person does so –
 - (a) in response to a notice under section 82, or
 - (b) knowing that the CAA is likely to use the information for the purpose of carrying out its functions under section 80 or 81.
- (3) The CAA may impose a penalty on a person if the person intentionally alters, suppresses or destroys a document that the person is required to produce by a notice under section 82.
- (4) The amount of a penalty imposed on a person under this section must be such amount as the CAA determines to be –
 - (a) appropriate, and
 - (b) proportionate to the action in respect of which it is imposed.

85 Procedure before imposing penalty

- (1) Before imposing a penalty on a person under section 83 or 84 the CAA must –
 - (a) give the person a notice about the proposed penalty,
 - (b) publish the notice as soon as practicable, and
 - (c) consider any representations made about the proposed penalty in the period specified in the notice (and not withdrawn).
- (2) The notice under subsection (1) must –
 - (a) state that the CAA proposes to impose a penalty,
 - (b) state the proposed amount of the penalty, and
 - (c) give the CAA's reasons for imposing the penalty.
- (3) In the case of a penalty under section 83 calculated entirely or partly by reference to a daily amount, the notice under subsection (1) must specify –
 - (a) the day on which daily amounts would begin to accumulate, and
 - (b) the day on which, or the circumstances in which, they would cease to accumulate.

- (4) The period specified in the notice under subsection (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.
- (5) Before varying the proposed amount of the 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, and
 - (c) consider any representations made about the proposed variation in the period specified in the notice (and not withdrawn).
- (6) In the case of penalty calculated entirely or partly by reference to a daily amount, the reference in subsection (5) to varying the proposed amount of the penalty includes varying –
 - (a) the day on which daily amounts would begin to accumulate, and
 - (b) the day on which, or circumstances in which, they would cease to accumulate.
- (7) The notice under subsection (5) must –
 - (a) specify the proposed variation, and
 - (b) give the CAA’s reasons for the proposed variation.
- (8) The period specified in the notice under subsection (5) 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.
- (9) The CAA may withdraw a notice under subsection (1) or (5) at any time by giving notice to the person on whom it proposed to impose the penalty.
- (10) The CAA must publish a notice under subsection (9) as soon as practicable after it is given.

86 Procedure after imposing penalty

- (1) As soon as practicable after imposing a penalty on a person under section 83 or 84, the CAA must –
 - (a) give a notice to the person on whom the penalty is imposed, and
 - (b) publish the notice.
- (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, and
 - (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 section 83 calculated entirely or partly by reference to a daily amount, the notice must specify –
 - (a) the day on which daily amounts begin to accumulate, and
 - (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, and
- (b) publish the notice.

87 Appeals

Schedule 10 (appeals against penalties) has effect.

88 Payment of penalties

- (1) Subsections (2) and (3) apply if all or part of a penalty imposed on a person under section 83 or 84 is not paid within the period specified in the notice given in respect of the penalty under section 86.
- (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 under section 83 or 84 or interest under this section must be paid into the Consolidated Fund.

89 Statement of policy

- (1) The CAA must prepare and publish a statement of its policy with respect to—
 - (a) carrying out its functions under sections 80 and 81,
 - (b) imposing penalties under sections 83 and 84, and
 - (c) determining the amount of such penalties.
- (2) The CAA may revise a statement of policy and, if it does so, it must publish the revised statement.
- (3) When preparing or revising a statement of policy with respect to carrying out the functions under sections 80 and 81, the CAA must have regard to the principle that the benefits of carrying out the functions should outweigh any adverse effects.
- (4) When imposing a penalty under section 83 or 84, or determining the amount of such a penalty, the CAA must have regard to the last statement of policy published under this section before the act or omission in respect of which the penalty is to be imposed.
- (5) When preparing or revising a statement of policy, the CAA must consult such persons as it considers appropriate.

90 Minor definitions

In sections 80 to 89 and Schedule 10—

- (a) “the CAA” means the Civil Aviation Authority, and
- (b) references to notice, however expressed, are to notice in writing.

Further provision about CAA

91 CAA membership

- (1) In section 2 of the Civil Aviation Act 1982 (constitution of CAA) for subsection (2) substitute –
 - “(2) The CAA is to consist of at least seven but not more than sixteen members.
 - (2A) It is to consist of –
 - (a) a person appointed to chair the CAA (“the chair”) and other non-executive members, and
 - (b) a chief executive and other executive members.
 - (2B) The chair and other non-executive members are to be appointed by the Secretary of State.
 - (2C) The Secretary of State may appoint a deputy chair from among the non-executive members.
 - (2D) The chief executive is to be appointed by the non-executive members with the approval of the Secretary of State.
 - (2E) Other executive members are to be appointed by the chief executive with the approval of –
 - (a) the chair, and
 - (b) at least one other non-executive member.
 - (2F) The Secretary of State and the chief executive must exercise their powers under this section to secure that, so far as practicable, the number of non-executive members exceeds the number of executive members.”
- (2) In paragraph 12 of Schedule 1 to that Act (CAA staff), at the beginning insert “Subject to section 2,”.
- (3) In paragraph 18 of that Schedule (interpretation of additional provisions relating to constitution, etc of CAA) for the words from ““the chairman”” to “the CAA and” substitute “–
 - (a) “chair”, “deputy chair”, “member”, “executive member” and “non-executive member” mean respectively the chair, the deputy chair, a member, an executive member and a non-executive member of the CAA, and
 - (b) ”.

92 Non-executive members of CAA

- (1) Schedule 1 to the Civil Aviation Act 1982 (additional provisions relating to constitution, etc of CAA) is amended as follows.

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- (2) For the heading immediately before paragraph 1 substitute –
“Appointment and tenure of non-executive members”.
- (3) In paragraphs 1 to 4 for “a member”, in each place, substitute “a non-executive member”.
- (4) In paragraph 1(b) for “each member” substitute “each non-executive member”.
- (5) In paragraphs 2 to 4 for “the chairman or a deputy chairman”, in each place, substitute “the chair or deputy chair”.
- (6) In paragraph 5 for sub-paragraph (1) substitute –
 “(1) The Secretary of State may by notice in writing remove a non-executive member from office if the Secretary of State is satisfied that the member –
 (a) has a financial or other interest that is likely to affect prejudicially the performance of the member’s functions,
 (b) has become bankrupt or made an arrangement with the member’s creditors,
 (c) is failing, or has failed, to perform the functions of a non-executive member, or
 (d) is otherwise unable or unfit to perform those functions.”
- (7) For the heading immediately before paragraph 6 substitute –
“Remuneration etc of non-executive members”.
- (8) In paragraph 6 –
 (a) for “member” substitute “non-executive member”, and
 (b) omit “with the consent of the Treasury”.
- (9) In paragraph 7 –
 (a) omit “with the consent of the Treasury”,
 (b) for “pensions, allowances or gratuities to or in respect of” substitute “allowances to”,
 (c) for “members” substitute “non-executive members”, and
 (d) omit sub-paragraph (2).
- (10) In paragraph 8 –
 (a) for “member” substitute “non-executive member”, and
 (b) omit “with the consent of the Treasury” in both places.
- (11) Omit paragraph 13(2) (member’s participation in employee pension scheme).

93 Executive members of CAA

- (1) Schedule 1 to the Civil Aviation Act 1982 (additional provisions relating to constitution, etc of CAA) is amended as follows.

(2) After paragraph 8 insert –

“Executive members: terms and conditions

8A (1) The chief executive is to be employed on such terms and conditions as the non-executive members may determine.

(2) Other executive members are to be employed on such terms and conditions as the chief executive may determine with the approval of the chair and at least one other non-executive member.

(3) In sub-paragraphs (1) and (2) references to terms and conditions include terms and conditions as to remuneration and the payment of pensions, allowances or gratuities.

(4) The CAA shall make provision for the payment of pensions, allowances and gratuities to or in respect of executive members in accordance with their terms and conditions.”

(3) In paragraph 12 (staff) –

(a) after “a reference to” insert “a person who is –

(a) an executive member, or

(b) ”, and

(b) at the end insert “(referred to in this Act as a “general employee”)”.

(4) In paragraph 13(1) (payment of pensions, allowances and gratuities) for “its employees” substitute “its general employees”.

(5) In Schedule 3 to that Act (matters arising out of certain transfers to the CAA), in paragraph 2(1) for “an employee” substitute “a general employee”.

94 CAA’s air navigation functions

(1) In section 66 of the Transport Act 2000 (CAA’s air navigation functions), for subsection (3) substitute –

“(3) The chief executive of the CAA must, with the approval of the chair and at least one other non-executive member of the CAA, nominate another executive member of the CAA for the purposes of this section.

(3A) A person nominated under subsection (3) must perform on the CAA’s behalf such of its air navigation functions as the Secretary of State may specify.

(3B) The chief executive must consult the Secretary of State before nominating a person under subsection (3).”

(2) In section 67 of that Act (national security nominee), in subsection (1) for “member” substitute “non-executive member”.

95 CAA charges

(1) Section 11 of the Civil Aviation Act 1982 (schemes and regulations determining CAA’s charges) is amended as follows.

(2) In subsection (1) omit “, after consultation with the Secretary of State,”.

- (3) After that subsection insert –
- “(1A) Before making a scheme under this section, the CAA must –
- (a) consult the persons who, in its opinion, are likely to be affected by the scheme or such of those persons as it thinks fit, and
 - (b) after consulting those persons, consult the Secretary of State.”
- (4) In subsection (2) for “sixty days” substitute “14 days”.
- (5) After subsection (3) insert –
- “(3A) Before making regulations under this section, the Secretary of State must consult the persons who, in the Secretary of State’s opinion, are likely to be affected by the regulations or such of those persons as the Secretary of State thinks fit.
- (3B) Subsection (3A) does not apply if the Secretary of State is satisfied that such consultation is unnecessary having regard to consultation carried out by the CAA in accordance with subsection (1A).”
- (6) In section 16 of that Act (provision by CAA of assistance etc for Secretary of State and others), in subsection (4A) –
- (a) after “with” insert “ –
 - (a) ”, and
 - (b) at the end insert “, or
 - (b) the making of regulations under section 11(3).”
- (7) In section 17 of that Act (provision by CAA of information etc for Secretary of State), at the end insert –
- “(4) Subsection (3) above does not apply in relation to information furnished to the Secretary of State in connection with the making of regulations under section 11(3).”

96 Civil sanctions

- (1) Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) is amended as follows.
- (2) In Schedule 5 (designated regulators) at the appropriate place insert –
“Civil Aviation Authority”.
- (3) In Schedule 7 (powers under specified enactments to include power to make provision for civil sanctions) at the appropriate place insert –
“Civil Aviation Act 1982, sections 7, 61, 71, 71A, 86”.

97 Criminal proceedings

In section 20 of the Civil Aviation Act 1982 (supplementary provisions with respect to the functions of CAA) after subsection (1) insert –

- “(1A) The power conferred on the CAA by subsection (1)(a) includes power to institute and carry on criminal proceedings in England and Wales or Northern Ireland.”

Miscellaneous

98 Dangerous flying

- (1) Section 81 of the Civil Aviation Act 1982 (dangerous flying) is repealed.
- (2) In consequence of subsection (1), that Act is amended in accordance with subsections (3) to (7).
- (3) In section 76 (liability of aircraft in respect of trespass etc), in subsection (1) omit the words “and there has been no breach of section 81 below”.
- (4) In section 92 (application of criminal law to aircraft), in the definition of “the air navigation enactments” in subsection (5), for “81 to” substitute “82,”.
- (5) In section 101 (power to apply certain provisions to Crown aircraft), in subsection (2) omit “81,”.
- (6) In Part 3 of Schedule 13 (subordinate instruments: supplemental powers), in paragraph 4(2) omit “81,”.
- (7) In Schedule 14 (transitional and transitory provisions and savings), in paragraph 7 omit “81,”.

99 Offences under Civil Aviation Act 1982

- (1) Section 99 of the Civil Aviation Act 1982 (offences) is amended as follows.
- (2) In subsection (4) –
 - (a) for “or under” substitute “, under”, and
 - (b) at the end insert “or under an Air Navigation Order”.
- (3) In subsection (5) omit paragraphs (c) and (d).

PART 3

FINAL PROVISIONS

100 Commencement

- (1) The provisions of this Act come into force on such day as the Secretary of State may by order appoint, subject to subsections (2) and (3).
- (2) This Part comes into force on the day on which this Act is passed.
- (3) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed –
 - (a) sections 80 to 90 and Schedule 10,
 - (b) sections 91 to 94, and
 - (c) sections 97 to 99.
- (4) An order under this section must be made by statutory instrument.
- (5) An order under this section may –
 - (a) appoint different days for different purposes, and
 - (b) make transitional, transitory or saving provision.

101 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

102 Channel Islands, Isle of Man and British overseas territories

- (1) The powers in section 108(1) of the Civil Aviation Act 1982 (power to extend to Channel Islands, Isle of Man and British overseas territories) apply to the amendments of section 11 of that Act made by this Act.
- (2) The powers in section 39(3) of the Aviation Security Act 1982 (extension outside United Kingdom) apply to the amendments of that Act made by this Act.

103 Short title

This Act may be cited as the Civil Aviation Act 2011.

SCHEDULES

SCHEDULE 1

Section 14

APPEALS AGAINST DETERMINATIONS

Appeals against determinations

- 1 (1) The following may appeal to the Competition Appeal Tribunal against a market power determination in relation to an airport area –
 - (a) a person who is the operator of the area at the time the determination is made,
 - (b) the Secretary of State, and
 - (c) any other person whose interests are materially affected by the determination.
- (2) A person who is the subject of an operator determination may appeal to the Competition Appeal Tribunal against the determination.
- (3) An appeal under this paragraph may be made only on one or more of the following grounds –
 - (a) that the determination is based on an error of fact,
 - (b) that the determination is wrong in law, or
 - (c) that the determination is based on the wrong exercise of a discretion.
- (4) The making of an appeal under this paragraph in respect of a determination does not suspend the effect of the determination, unless the Competition Appeal Tribunal orders otherwise.

Notice of appeal

- 2 (1) An appeal under paragraph 1 against a determination must be made by sending a notice of appeal to the Registrar of the Competition Appeal Tribunal.
- (2) The notice must be received by the Registrar before the end of the period of 60 days beginning with the relevant day.
- (3) In this paragraph “the relevant day” means the later of –
 - (a) the day on which the CAA publishes the notice of the determination, and
 - (b) the day on which the CAA publishes the reasons for the determination.
- (4) Sub-paragraphs (1) and (2) have effect subject to provision in rules made under section 15 of the Enterprise Act 2002 (Tribunal rules) after this Schedule comes into force –

- (a) as to the person to whom a notice of an appeal under paragraph 1 must be given;
- (b) providing that such a notice must be received within a longer or shorter period beginning with the relevant day.

Decisions on appeal

- 3 (1) The Competition Appeal Tribunal must decide an appeal under paragraph 1 –
- (a) on the merits, and
 - (b) by reference to the grounds of appeal in the notice of appeal.
- (2) It may –
- (a) confirm or set aside all or part of the market power determination or operator determination;
 - (b) direct the CAA to make a further determination;
 - (c) give the CAA such other directions as 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 power to do apart from the direction.
- (4) The CAA must comply with directions under this paragraph.
- (5) If the CAA fails to comply with a direction to make a further market power determination in respect of an airport area within the time specified by the Competition Appeal Tribunal, the Tribunal may make the determination.
- (6) If the Competition Appeal Tribunal makes a market power determination under sub-paragraph (5) –
- (a) the determination has effect as if made by the CAA, and
 - (b) section 9 applies in relation to the determination as if the references to the CAA were references to the Competition Appeal Tribunal.
- (7) If the CAA fails to comply with a direction to make a further operator determination in respect of a person and an airport area within the time specified by the Competition Appeal Tribunal, the Tribunal may make the determination.
- (8) If the Competition Appeal Tribunal makes an operator determination under sub-paragraph (7) –
- (a) the determination has effect as if made by the CAA under section 11(1), and
 - (b) sections 11(2) and 12(1) to (3) and (5) apply in relation to the determination as if the references to the CAA were references to the Competition Appeal Tribunal.

Further appeals

- 4 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Competition Appeal Tribunal under paragraph 3, including a direction.
- (2) An appeal under this paragraph against a decision relating to a market power determination may be brought by –

- (a) a party to the proceedings before the Competition Appeal Tribunal, or
 - (b) a person whose interests are materially affected by the decision or direction.
- (3) An appeal under this paragraph against a decision relating to an operator determination may be brought by a party to the proceedings before the Competition Appeal Tribunal.
- (4) An appeal may not be brought under this paragraph without the permission of –
- (a) the Competition Appeal Tribunal, or
 - (b) the appropriate court.
- (5) In this paragraph “the appropriate court” means –
- (a) in the case of an appeal from proceedings in England and Wales or Northern Ireland, the Court of Appeal, or
 - (b) in the case of an appeal from proceedings in Scotland, the Court of Session.

SCHEDULE 2

Section 30

APPEALS UNDER SECTIONS 24 AND 25

PART 1

PERMISSION TO APPEAL

Application for permission to appeal

- 1
- (1) An application for permission to appeal under section 24 against a decision under section 16 in respect of a licence may not be made after the end of the period of 6 weeks beginning with the day on which notice of the decision to grant the licence was published in accordance with section 16.
 - (2) An application for permission to appeal under section 25 against a decision under section 22 to modify a licence condition may not be made after the end of the period of 6 weeks beginning with the day on which notice of the decision was published in accordance with section 22.
 - (3) An application for permission to appeal under section 24 or 25 may be made only by giving a notice to the Competition Commission.
 - (4) The applicant must send a copy of the notice to the CAA.
 - (5) The CAA must publish the notice.

Determination of application for permission to appeal

- 2
- (1) The Competition Commission’s decision on an application for permission to appeal is to be taken by an authorised member of the Commission.
 - (2) The authorised member must take the decision before the end of the period of 9 weeks beginning with the day on which the relevant notice was published.

- (3) In sub-paragraph (2) “the relevant notice” means –
 - (a) in the case of an application for permission to appeal under section 24, the notice published in accordance with section 16 of the decision to grant the licence, and
 - (b) in the case of an application for permission to appeal under section 25, the notice published in accordance with section 22 of the decision to modify the licence.
- (4) The authorised member may grant permission to appeal subject to conditions.
- (5) The conditions may, in particular, include –
 - (a) conditions which limit the matters that are to be considered on the appeal,
 - (b) conditions for the purpose of expediting the determination of the appeal, and
 - (c) conditions requiring the appeal to be considered together with other appeals, including appeals relating to different matters or decisions and appeals brought by different persons.
- (6) The Competition Commission must –
 - (a) publish the decision on an application for permission to appeal, giving reasons for the decision, and
 - (b) send a copy of the decision and reasons to the persons listed in sub-paragraph (7).
- (7) Those persons are –
 - (a) the holder of the licence which is the subject of the application,
 - (b) if the application was made by someone other than the holder of that licence, the applicant,
 - (c) any other person who has applied for permission to appeal to the Competition Commission against the same decision,
 - (d) such bodies representing airport operators or providers of air transport services as the Commission considers appropriate, and
 - (e) the CAA.
- (8) Section 29(5) applies to the publication of a decision and reasons under this paragraph as it applies to the publication of an order containing a determination of an appeal.

Time limit for CAA to make representations

- 3 (1) This paragraph applies where the CAA wishes to make representations to the Competition Commission in relation to an application under paragraph 1 for permission to appeal against a decision.
- (2) The CAA must make the representations in writing before the end of the period of 8 weeks beginning with the day on which the relevant notice was published.
- (3) In sub-paragraph (2) “the relevant notice” means –
 - (a) in the case of an application for permission to appeal under section 24, the notice published in accordance with section 16 of the decision to grant the licence, and

- (b) in the case of an application for permission to appeal under section 25, the notice published in accordance with section 22 of the decision to modify the licence.
- (4) The CAA must send a copy of its representations to –
- (a) the holder of the licence which is the subject of the application,
 - (b) if the application was made by someone other than the holder of that licence, the applicant,
 - (c) any other person who has applied for permission to appeal against, or for a direction in respect of, the same decision, and
 - (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

PART 2

AUTOMATIC SUSPENSION OF CONDITION OF NEW LICENCE OR MODIFICATION

Automatic suspension of condition of new licence including exception for certain financial arrangements

- 4 (1) Sub-paragraph (2) applies if –
- (a) the CAA decides to grant a licence under section 16,
 - (b) an application is made for permission to appeal under section 24 against the CAA’s decision to include a relevant financial arrangements condition in the licence, and
 - (c) the relevant financial arrangements condition would have effect, but for this paragraph, before the end of the period of 9 weeks beginning with the day on which notice of the decision was published in accordance with section 16 (“the 9 week period”).
- (2) The relevant financial arrangements condition does not have effect during the 9 week period.
- (3) Sub-paragraph (4) applies where –
- (a) the CAA decides to grant a licence under section 16, and
 - (b) the Competition Commission grants an application for permission to appeal under section 24 against the CAA’s decision to include a relevant financial arrangements condition in the licence.
- (4) The relevant financial arrangements condition does not have effect until the appeal against the decision is determined or withdrawn.
- (5) In this paragraph, “relevant financial arrangements condition” means a condition that is subject to an exception (however expressed) relating to, or operating by reference to, financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before section 4 came into force.
- (6) For the purposes of this paragraph, financial arrangements entered into after section 4 came into force but pursuant to other financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before that time are to be treated as entered into before that time.

Automatic suspension of modification of condition of existing licence including exception for certain financial arrangements

- 5 (1) Sub-paragraph (2) applies if –
- (a) the CAA decides under section 22 to modify a licence condition,
 - (b) the decision is subject to the restrictions in section 23,
 - (c) an application is made for permission to appeal under section 25 against the decision, and
 - (d) the licence modification that is the subject of the decision would have effect, but for this paragraph, before the end of the period of 9 weeks beginning with the day on which notice of the decision was published in accordance with section 22 (“the 9 week period”).
- (2) The licence modification does not have effect during the 9 week period.
- (3) Sub-paragraph (4) applies where –
- (a) the CAA decides under section 22 to modify a licence condition,
 - (b) the decision is subject to the restrictions in section 23, and
 - (c) the Competition Commission grants permission to appeal against the decision.
- (4) The licence modification does not have effect until the appeal against the decision is determined or withdrawn.

PART 3

APPLICATION FOR SUSPENSION OF CONDITION OF NEW LICENCE OR MODIFICATION

Application for direction suspending condition of new licence

- 6 (1) Where an application is made for permission to appeal against a decision under section 16 to include a condition in a licence, an application for a direction suspending the effect of the decision may be made to the Competition Commission –
- (a) by the person who applied for permission to appeal, or
 - (b) by another person who would be entitled to appeal against the decision.
- (2) An application for a direction may be made at any time before the determination of the appeal.
- (3) The applicant must send a copy of the application to the CAA.
- (4) The CAA must publish the application.

Effect of early application for direction under paragraph 6

- 7 (1) This paragraph applies if –
- (a) an application is made under paragraph 6 for a direction suspending the effect of a decision under section 16 to include a condition in a licence,
 - (b) the application is made before the end of the period of 6 weeks beginning with the day on which notice of the decision to grant the licence was published in accordance with section 16, and

- (c) the licence condition would have effect, but for this paragraph, before the end of the period of 9 weeks beginning with that day (“the 9 week period”).
- (2) The licence condition does not have effect during the 9 week period.
- (3) The Competition Commission’s decision on the application under paragraph 6 must be taken before the end of the 9 week period.

Application for direction suspending licence modification

- 8 (1) Where an application for permission to appeal against a decision under section 22 to modify a licence condition is made, an application for a direction suspending the effect of the decision may be made to the Competition Commission—
- (a) by the person who applied for permission to appeal, or
 - (b) by another person who would be entitled to appeal against the decision.
- (2) An application for a direction may be made at any time before the determination of the appeal.
- (3) The applicant must send a copy of the application to the CAA.
- (4) The CAA must publish the application.

Effect of early application for direction under paragraph 8

- 9 (1) This paragraph applies if—
- (a) an application is made under paragraph 8 for a direction suspending the effect of a decision under section 22 to modify a licence condition,
 - (b) the application is made before the end of the period of 6 weeks beginning with the day on which notice of that decision was published in accordance with that section, and
 - (c) the modification would have effect, but for this paragraph, before the end of the period of 9 weeks beginning with that day (“the 9 week period”).
- (2) The modification does not have effect during the 9 week period.
- (3) The Competition Commission’s decision on the application under paragraph 8 must be taken before the end of the 9 week period.

Direction following application under paragraph 6 or 8

- 10 (1) The Competition Commission’s functions in relation to an application under paragraph 6 or 8 for a direction are to be carried out by an authorised member of the Commission.
- (2) Sub-paragraphs (3) and (4) apply in relation to an application under paragraph 6.
- (3) An authorised member of the Competition Commission may give a direction suspending the effect of a decision under section 16 to include a condition in a licence only if—

- (a) the applicant for the direction would incur significant costs if the licence condition were to have effect before the determination of the appeal, and
 - (b) the balance of convenience does not otherwise require the licence condition to have effect pending the determination of the appeal.
- (4) If an authorised member gives a direction suspending the effect of the decision, the licence condition does not have effect, or ceases to have effect, to the extent specified in the direction until the appeal against the decision is determined or withdrawn.
- (5) Sub-paragraphs (6) and (7) apply in relation to an application under paragraph 8.
- (6) An authorised member of the Competition Commission may give a direction suspending the effect of a decision under section 22 to modify a licence condition only if—
 - (a) the applicant for the direction would incur significant costs if the modification were to have effect, or to continue to have effect, before the determination of the appeal, and
 - (b) the balance of convenience does not otherwise require the modification to have effect pending the determination of the appeal.
- (7) If an authorised member gives a direction suspending the effect of the decision, the modification does not have effect, or ceases to have effect, to the extent specified in the direction until the appeal against the decision is determined or withdrawn.
- (8) The Competition Commission must—
 - (a) publish a direction under this paragraph, and
 - (b) send a copy of the direction to the persons listed in sub-paragraph (9).
- (9) Those persons are—
 - (a) the holder of the licence which is the subject of the application under paragraph 6 or 8,
 - (b) if the application was made by someone other than the holder of that licence, the applicant,
 - (c) any other person who has applied for a direction suspending the effect of the same decision,
 - (d) such bodies representing airport operators or providers of air transport services as the Competition Commission considers appropriate, and
 - (e) the CAA.
- (10) Section 29(5) applies to the publication of a direction under this paragraph as it applies to the publication of an order containing a determination of an appeal.

Time limit for CAA to make representations

- 11 (1) This paragraph applies where the CAA wishes to make representations to the Competition Commission in relation to an application under paragraph 6 or 8 for a direction.

- (2) In a case to which paragraph 7 or 9 applies, the CAA must make the representations in writing before the end of the period of 8 weeks beginning with the day on which the relevant notice was published.
- (3) In sub-paragraph (2) “the relevant notice” means –
 - (a) in the case of an application under paragraph 6, the notice published in accordance with section 16 of the decision to grant the licence, and
 - (b) in the case of an application under paragraph 8, the notice published in accordance with section 22 of the decision to modify the licence.
- (4) In any other case –
 - (a) the Competition Commission must specify a reasonable period for making representations, and
 - (b) the CAA must make the representations in writing before the end of that period.
- (5) In all cases, the CAA must send a copy of its representations to –
 - (a) the holder of the licence which is the subject of the application,
 - (b) if the application was made by someone other than the holder of that licence, the applicant,
 - (c) any other person who has applied for a direction suspending the effect of the same decision or for permission to appeal against the same decision, and
 - (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

PART 4

APPEALS

Determination of appeal by group

- 12 (1) The following functions of the Competition Commission are to be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman –
 - (a) considering and determining an appeal, and
 - (b) giving directions and taking other steps to give effect to the Commission’s determination on an appeal.
- (2) The group must consist of 3 members of the Competition Commission.
- (3) The Chairman must appoint one of the members of the group to be its chair.
- (4) The Chairman may –
 - (a) select himself or herself to be a member of the group, and
 - (b) appoint himself or herself to be its chair.
- (5) A decision of the group is effective only if –
 - (a) all of the members of the group are present when it is made, and
 - (b) at least 2 members of the group are in favour of the decision.

Replacing members of group

- 13 (1) The Chairman may select a member of the Competition Commission to replace another as a member of a group with the function of determining an appeal if –
- (a) the person being replaced has ceased to be a member of the Commission,
 - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform the duties of a member of the group, or
 - (c) the Chairman is satisfied that, because of a particular interest of the person being replaced, it is inappropriate for that person to remain a member of the group.
- (2) The Chairman may select himself or herself to replace a member of the group.
- (3) The replacement of a member of the group does not –
- (a) prevent the group from continuing with anything begun before the member is replaced, or
 - (b) affect any decision made, or direction given, by the group before the member is replaced.

Consideration of new matters

- 14 (1) This paragraph applies to –
- (a) a person with the function of determining an application for permission to appeal under section 24 or 25, and
 - (b) a group with the function of determining an appeal.
- (2) The person or group must not have regard to any matter which was not considered by the CAA in making the decision appealed against unless the person or group considers that –
- (a) the matter is relevant to the determination,
 - (b) the CAA was aware of the matter, or could reasonably have been expected to be aware of the matter, before it made its decision, and
 - (c) the CAA would have been entitled to have regard to the matter.

Time limit for CAA to make representations

- 15 (1) This paragraph applies where an application for permission to appeal has been granted and the CAA wishes to make representations to the Competition Commission in relation to –
- (a) the decision that is the subject of the appeal,
 - (b) the CAA’s reasons for the decision, or
 - (c) the grounds on which the appeal is being brought.
- (2) The CAA must make the representations in writing before the end of the period of 12 weeks beginning with the day on which the relevant notice was published.
- (3) In sub-paragraph (2) “the relevant notice” means –
- (a) in the case of an appeal under section 24, the notice published in accordance with section 16 of the decision to grant the licence, and

- (b) in the case of an appeal under section 25, the notice published in accordance with section 22 of the decision to modify the licence.
- (4) The CAA must send a copy of its representations to –
- (a) the holder of the licence which is the subject of the appeal,
 - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,
 - (c) any other person who has applied for permission to appeal to the Competition Commission against the same decision, and
 - (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

Matters that may be disregarded

- 16 (1) A group with the function of determining an appeal may disregard some or all of the matters listed in sub-paragraph (2) if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28.
- (2) Those matters are –
- (a) matters raised by the CAA that were not contained in representations made for the purposes of the appeal in accordance with paragraph 3, 11 or 15, and
 - (b) matters raised by the appellant that were not raised by that appellant –
 - (i) at the time of the application under paragraph 1 for permission to appeal, or
 - (ii) in an application under paragraph 6 or 8 for a direction.

PART 5

GENERAL

Production of documents

- 17 (1) The Competition Commission may by notice require a person to produce to the Commission documents specified or described in the notice that are in the person's custody or under the person's control.
- (2) The notice may require the production of documents –
- (a) at the time and place specified in the notice, and
 - (b) in the form and manner specified in the notice.
- (3) The notice may not require a person to produce documents that the person could not be compelled to provide in evidence in civil proceedings before the appropriate court.
- (4) A notice under this paragraph may be given on the Competition Commission's behalf by –
- (a) a member of the Commission, or
 - (b) its secretary.

Oral hearings

- 18 (1) For the purposes of this Schedule the following persons may hold an oral hearing and take evidence on oath –
- (a) a person considering an application under paragraph 1 for permission to appeal,
 - (b) a person considering an application under paragraph 6 or 8 for a direction, and
 - (c) a group with the function of determining an appeal.
- (2) In the course of holding such a hearing and taking such evidence, a person or group described in sub-paragraph (1) may administer oaths.
- (3) The Competition Commission may by notice require a person –
- (a) to attend at a time and place specified in the notice, and
 - (b) at that time and place, to give evidence to a person or group described in sub-paragraph (1).
- (4) At an oral hearing, the person or group conducting the hearing may require the following persons to give evidence or to make representations –
- (a) the applicant or appellant (if present), or
 - (b) a person attending the hearing as a representative of the applicant, the appellant or the CAA.
- (5) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of the applicant, the appellant or the CAA.
- (6) If the applicant, the appellant or a representative of the applicant, the appellant or the CAA is not present at a hearing –
- (a) the Competition Commission is not required to give notice to that person under sub-paragraph (3), and
 - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person’s evidence or representations.
- (7) A person may not be required under this paragraph to give evidence that the person could not be compelled to give in civil proceedings before the appropriate court.
- (8) Where a person is required under this paragraph to attend at a place more than 16 kilometres from the person’s place of residence, the Competition Commission must pay the person the necessary expenses of attendance.
- (9) A notice under this paragraph may be given on the Competition Commission’s behalf by –
- (a) a member of the Commission, or
 - (b) its secretary.

Written evidence

- 19 (1) The Competition Commission may by notice require a person to produce a written statement with respect to a matter specified in the notice to –
- (a) a person considering an application under paragraph 1 for permission to appeal,
 - (b) a person considering an application under paragraph 6 or 8 for a direction, or

- (c) a group with the function of determining an appeal.
- (2) The notice may require the written statement –
 - (a) to be produced at the time and place specified in the notice, and
 - (b) to be verified by a statement of truth.
- (3) Where a notice requires a written statement to be verified by a statement of truth, the statement may be disregarded unless it is so verified.
- (4) A person may not be required under this paragraph to produce a written statement about a matter about which the person could not be compelled to give evidence in civil proceedings before the appropriate court.
- (5) A notice under this paragraph may be given on the Competition Commission’s behalf by –
 - (a) a member of the Commission, or
 - (b) its secretary.

Expert advice

- 20 Where permission to appeal is granted under paragraph 2, the Competition Commission may commission expert advice with respect to any matter raised by the appellant or the CAA.

Enforcement of requirements in relation to evidence etc

- 21 (1) This paragraph applies where a person (“P”) –
 - (a) fails to comply with a notice under paragraph 17, 18 or 19,
 - (b) fails to comply with any other requirement imposed under paragraph 17, 18 or 19,
 - (c) in complying with a notice under paragraph 19, makes a statement that is false or misleading in a material respect, or
 - (d) in providing information verified by a statement of truth required by appeal rules, provides information that is false or misleading in a material respect.
- (2) A member of the Competition Commission may certify to the appropriate court –
 - (a) the failure,
 - (b) the fact that P has made a false or misleading statement in circumstances described in sub-paragraph (1)(c), or
 - (c) the fact that P has provided false or misleading information in circumstances described in sub-paragraph (1)(d).
- (3) The appropriate court may inquire into the certified failure or act and, if it does so, must hear –
 - (a) any witness against P,
 - (b) any witness on behalf of P, and
 - (c) any statement in P’s defence.
- (4) The appropriate court may punish P as if P had been guilty of contempt of court if it is satisfied that –
 - (a) the certified failure or act took place, and
 - (b) P did not have a reasonable excuse for the failure or act.

- (5) Where P is a body corporate, the appropriate court may punish any director or other officer of that body, either instead of or as well as punishing the body.
- (6) In this paragraph “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body.

Destruction of documents

- 22 (1) A person who intentionally alters, suppresses or destroys a document that the person has been required to produce under paragraph 17 is guilty of an offence.
- (2) In England and Wales and Northern Ireland, a person guilty of an offence under this paragraph is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.
- (3) In Scotland, a person guilty of an offence under this paragraph is liable—
 - (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

Appeal rules

- 23 (1) The Competition Commission may make rules regulating the conduct and disposal of appeals.
- (2) The rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing or requirement for which this Schedule provides.
- (3) The rules may, in particular, include—
 - (a) provision requiring an application for permission to appeal to be accompanied by information specified in the rules,
 - (b) provision requiring such information to be verified by a statement of truth,
 - (c) provision requiring an applicant for permission to appeal to provide the CAA with information specified in the rules,
 - (d) provision imposing time limits or other restrictions on the taking of evidence at an oral hearing, and
 - (e) provision imposing time limits or other restrictions on the making of representations or observations at such a hearing.
- (4) The rules may make different provision for different purposes.
- (5) Before making rules under this paragraph the Competition Commission must consult such persons as it considers appropriate.
- (6) The Competition Commission must publish rules made under this paragraph.

Costs

- 24 (1) A group that determines an appeal must make an order requiring the payment to the Competition Commission of the costs incurred by the Commission in connection with the appeal.
- (2) The order must require those costs to be paid –
- (a) where the appeal is allowed in full, by the CAA,
 - (b) where the appeal is dismissed in full, by the appellant, and
 - (c) where the appeal is allowed in part, by the parties to the appeal in such proportions as the Competition Commission considers appropriate.
- (3) A group that determines an appeal may make such order as it thinks fit requiring one party to the appeal to make payments to another in respect of costs reasonably incurred by the other party in connection with the appeal.
- (4) A person who is required to make a payment by an order under this paragraph must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (5) If that person does not do so, the unpaid balance carries interest at a rate specified in the order or determined in accordance with the order.

Withdrawal of appeal

- 25 After an application for permission to appeal is made, the appeal may be withdrawn only with the consent of the Competition Commission.

Secretary of State’s power to modify time limits

- 26 The Secretary of State may by regulations modify any period of time specified in this Schedule.

Interpretation

- 27 In this Schedule –
- “appeal” means an appeal under section 24 or 25;
 - “appeal rules” means rules under paragraph 23;
 - “the appropriate court” means –
 - (a) in relation to England and Wales and Northern Ireland, the High Court, and
 - (b) in relation to Scotland, the Court of Session;
 - “authorised member of the Competition Commission”, in relation to a power exercisable in connection with an appeal, means –
 - (a) the Chairman,
 - (b) a member of the Commission authorised by the Chairman to exercise that power, or
 - (c) the chair of the group which has, or (if permission to appeal is granted) will have, the function of determining the appeal;
 - “Chairman” means the Chairman of the Competition Commission;
 - “a group” means a group selected in accordance with paragraphs 12 and 13;

“statement of truth”, in relation to the production of a statement or in relation to information provided by a person, means a statement that the person producing that statement or providing that information believes the facts contained in the statement or the information to be true.

SCHEDULE 3

Section 45

APPEALS AGAINST ORDERS AND PENALTIES

Appeals against enforcement orders and urgent enforcement orders

- 1 (1) A person may appeal to the Competition Appeal Tribunal against –
 - (a) an enforcement order given to the person, or
 - (b) an urgent enforcement order given to the person that has been confirmed.
- (2) The appeal may be against one or more of the following –
 - (a) a decision to give the order or, in the case of an urgent enforcement order, to confirm the order;
 - (b) a decision as to the steps specified in the order;
 - (c) a decision as to the period allowed for taking those steps.
- (3) The appeal may be made only on one or more of the following grounds –
 - (a) that the decision is based on an error of fact;
 - (b) that it is wrong in law;
 - (c) that it is based on the wrong exercise of a discretion.
- (4) The making of an appeal under this paragraph against an order suspends the effect of the order until the appeal is decided or withdrawn, unless the Competition Appeal Tribunal orders otherwise.

Appeals against modification and revocation of orders

- 2 (1) A person may appeal to the Competition Appeal Tribunal against –
 - (a) a decision to modify or revoke an enforcement order,
 - (b) a decision to modify an urgent enforcement order that has been confirmed, or
 - (c) a decision to revoke an urgent enforcement order that has been confirmed.
- (2) An appeal under this paragraph may be made only by a person –
 - (a) who is not the person to whom the order was given, but
 - (b) who appears to the Competition Appeal Tribunal to have a sufficient interest in the decision.
- (3) The appeal may be made only on one or more of the following grounds –
 - (a) that the decision is based on an error of fact;
 - (b) that it is wrong in law;
 - (c) that it is based on the wrong exercise of a discretion.

- (4) The making of an appeal under this paragraph against the modification or revocation of an order suspends its modification or revocation until the appeal is decided or withdrawn, unless the Competition Appeal Tribunal orders otherwise.

Appeals against penalties

- 3 (1) A person may appeal to the Competition Appeal Tribunal against a penalty imposed on the person under section 39 or 40.
- (2) The appeal may be against one or more of the following –
 - (a) a decision to impose the 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) The appeal may be made only on one or more of the following grounds –
 - (a) that the decision is based on an error of fact;
 - (b) that it is wrong in law;
 - (c) that it is based on the wrong exercise of a discretion.
- (4) 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

- 4 (1) The Competition Appeal Tribunal must decide an appeal under this Schedule –
 - (a) on the merits, and
 - (b) by reference to the grounds of appeal in the notice of appeal.
- (2) It may –
 - (a) confirm or set aside the order, modification, revocation or penalty;
 - (b) give the CAA such directions as 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 power to do apart from the direction.
- (4) The CAA must comply with directions under this paragraph.

Further appeals

- 5 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Competition Appeal Tribunal under paragraph 4, 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

- (b) the appropriate court.
- (4) “The appropriate court” means –
 - (a) in the case of an appeal from proceedings in England and Wales and Northern Ireland, the Court of Appeal, or
 - (b) in the case of an appeal from proceedings in Scotland, the Court of Session.

SCHEDULE 4

Section 47

APPEALS AGAINST REVOCATION OF LICENCES

Appeals against revocation of licence

- 1 (1) A person may appeal to the Competition Appeal Tribunal against –
 - (a) a notice under section 46(1) revoking a licence, and
 - (b) a further notice under section 46(9) withdrawing a notice revoking a licence,
 unless the notice or further notice was given in accordance with a direction given by the Competition Appeal Tribunal under this Schedule.
- (2) The appeal may be against one or more of the following –
 - (a) a decision to give the notice or further notice;
 - (b) in the case of an appeal under sub-paragraph (1)(a), a decision as to the day on which revocation takes effect.
- (3) The appeal may be made only on one or more of the following grounds –
 - (a) that the decision is based on an error of fact;
 - (b) that it is wrong in law;
 - (c) that it is based on the wrong exercise of a discretion.
- (4) The making of an appeal under this paragraph against a notice under section 46(1) revoking a licence –
 - (a) suspends the effect of the notice until the appeal is decided or withdrawn, and
 - (b) extends the period specified in the notice until the appeal is decided or withdrawn.
- (5) The making of an appeal under this paragraph against a further notice under section 46(9) withdrawing a notice revoking a licence –
 - (a) suspends the effect of the further notice until the appeal is decided or withdrawn, and
 - (b) extends the period specified in the notice revoking the licence until the appeal is decided or withdrawn.

Notice of appeal

- 2 (1) An appeal under paragraph 1 must be made by sending a notice of appeal to the Registrar of the Competition Appeal Tribunal.
- (2) The notice must be received by the Registrar before the end of the period of 30 days beginning with the relevant day.

- (3) In the case of an appeal under paragraph 1(1)(a) “the relevant day” means the later of –
 - (a) the day on which the CAA publishes the notice under section 46(1) revoking the licence, and
 - (b) the day on which the CAA publishes a notice extending the period on which the notice revoking the licence takes effect.
- (4) In the case of an appeal under paragraph 1(1)(b) “the relevant day” means the day on which the CAA publishes the further notice under section 46(9).
- (5) Sub-paragraphs (1) and (2) have effect subject to provision in rules made under section 15 of the Enterprise Act 2002 (Tribunal rules) after this Schedule comes into force –
 - (a) as to the person to whom a notice of an appeal under paragraph 1 must be given;
 - (b) providing that such a notice must be received within a longer or shorter period beginning with the relevant day.

Decisions on appeal

- 3 (1) The Competition Appeal Tribunal must decide an appeal under this Schedule –
 - (a) on the merits, and
 - (b) by reference to the grounds of appeal in the notice of appeal.
- (2) It may –
 - (a) confirm or set aside the notice that is the subject of the appeal;
 - (b) give the CAA such directions as 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 power to do apart from the direction.
- (4) The CAA must comply with directions under this paragraph.

Further appeals

- 4 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Competition Appeal Tribunal under paragraph 3, 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
 - (b) the appropriate court.
- (4) “The appropriate court” means –
 - (a) in the case of an appeal from proceedings in England and Wales and Northern Ireland, the Court of Appeal, or
 - (b) in the case of an appeal from proceedings in Scotland, the Court of Session.

SCHEDULE 5

Section 53

APPEALS AGAINST PENALTIES: INFORMATION

Appeals against penalties

- 1 (1) A person may appeal to the Competition Appeal Tribunal against a penalty imposed on the person under section 49 or 50.
- (2) The appeal may be against one or more of the following –
 - (a) a decision to impose the 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) The appeal may be made only on one or more of the following grounds –
 - (a) that the decision is based on an error of fact;
 - (b) that it is wrong in law;
 - (c) that it is based on the wrong exercise of a discretion.
- (4) 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

- 2 (1) The Competition Appeal Tribunal must decide an appeal under this Schedule –
 - (a) on the merits, and
 - (b) by reference to the grounds of appeal in the notice of appeal.
- (2) It may –
 - (a) confirm or set aside the penalty;
 - (b) give the CAA such directions as 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 power to do apart from the direction.
- (4) The CAA must comply with directions under this paragraph.

Further appeals

- 3 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Competition Appeal Tribunal under paragraph 2, 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
 - (b) the appropriate court.

- (4) “The appropriate court” means –
- (a) in the case of an appeal from proceedings in England and Wales and Northern Ireland, the Court of Appeal, or
 - (b) in the case of an appeal from proceedings in Scotland, the Court of Session.

SCHEDULE 6

Section 57

RESTRICTIONS ON DISCLOSING INFORMATION

Prohibition on disclosure

- 1 (1) This paragraph applies to information if –
- (a) it was obtained under or by virtue of Chapter 1 of this Part, and
 - (b) it relates to the affairs of an individual or to a particular business.
- (2) The information must not be disclosed –
- (a) during the lifetime of the individual, or
 - (b) while the business continues to be carried on.
- (3) Sub-paragraph (2) has effect subject to the following provisions of this Schedule.

Disclosure with consent

- 2 Paragraph 1(2) does not apply to a disclosure made with the consent of –
- (a) the individual, or
 - (b) the person for the time being carrying on the business.

Disclosure of information already available to public

- 3 Paragraph 1(2) does not apply to information that has been made available to the public by being disclosed –
- (a) in circumstances in which disclosure is not precluded by this Schedule, or
 - (b) for a purpose for which disclosure is not precluded by this Schedule.

Other permitted disclosures

- 4 (1) Paragraph 1(2) does not apply where information is disclosed –
- (a) for the purpose of facilitating the carrying out by a relevant person of functions under a relevant statutory provision, or
 - (b) for the purposes of civil proceedings brought under or by virtue of a relevant statutory provision.
- (2) These are relevant persons –
- the CAA;
 - a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);
 - a Northern Ireland Department;
 - the head of a Northern Ireland Department;

the Competition Appeal Tribunal;
the Competition Commission;
the Office of Fair Trading;
the Gas and Electricity Markets Authority;
the Director General of Electricity Supply for Northern Ireland;
the Director General of Gas for Northern Ireland;
the Insolvency Practitioners Tribunal;
the Water Services Regulation Authority;
the Office of Rail Regulation;
the Coal Authority;
the Office of Communications;
a local weights and measures authority in Great Britain;
a district council in Northern Ireland.

(3) These are relevant statutory provisions –

Part 1 of this Act;
sections 80 and 81 of this Act;
Trade Descriptions Act 1968;
Fair Trading Act 1973;
Consumer Credit Act 1974;
Estate Agents Act 1979;
Competition Act 1980;
Civil Aviation Act 1982;
Air Navigation Orders made under section 60 of the Civil Aviation Act 1982;
regulations made under section 75 of the Civil Aviation Act 1982 (investigation of accidents);
Airports Act 1986;
Gas Act 1986;
Insolvency Act 1986;
Consumer Protection Act 1987;
Consumer Protection (Northern Ireland) Order 1987;
Control of Misleading Advertisements Regulations 1988;
Electricity Act 1989;
Broadcasting Act 1990;
Property Misdescriptions Act 1991;
Water Industry Act 1991;
Water Resources Act 1991;
Electricity (Northern Ireland) Order 1992;
Gas (Northern Ireland) Order 1992;
Railways Act 1993;
Coal Industry Act 1994;
Broadcasting Act 1996;
Competition Act 1998;
Part 1 of the Transport Act 2000;
Enterprise Act 2002;
Communications Act 2003;
Water Act 2003;

Railways Act 2005;
Water and Sewerage Services (Northern Ireland) Order 2006;
and subordinate legislation made for the purpose of securing compliance
with relevant EU provisions.

- (4) These are relevant EU provisions –
- (a) Articles 104 and 105 of the Treaty on the Functioning of the European Union (competition);
 - (b) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
 - (c) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.
- 5 Paragraph 1(2) does not apply where information is disclosed –
- (a) in connection with the investigation of a criminal offence or for the purposes of criminal proceedings,
 - (b) in pursuance of an EU obligation,
 - (c) for the purpose of facilitating the performance of a function of the European Commission in respect of European Union law about competition,
 - (d) for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise powers conferred by or under the Financial Services Act 1986 or by or under the enactments relating to companies, insurance companies or insolvency,
 - (e) for the purpose of enabling or assisting an inspector appointed under the enactments relating to companies to carry out functions under those enactments,
 - (f) for the purpose of enabling or assisting an official receiver to carry out functions under the enactments relating to insolvency,
 - (g) for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989 to carry out its functions,
 - (h) for the purpose of facilitating the carrying out by the Health and Safety Executive of its functions under an enactment,
 - (i) for the purpose of facilitating the carrying out by an enforcing authority (within the meaning of Part 1 of the Health and Safety at Work etc Act 1974) of functions under a relevant statutory provision (within the meaning of that Act), or
 - (j) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of functions under any enactment.
- 6 (1) The Secretary of State may by regulations amend paragraph 4 or 5.
- (2) The regulations must be made by statutory instrument.
- (3) A statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

Offence

- 7 A person who discloses information in contravention of paragraph 1(2) is guilty of an offence and liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for not more than 2 years or to a fine (or both).

Criminal liability of officers of bodies corporate etc

- 8 (1) Sub-paragraph (2) applies if an offence under this Schedule committed by a body corporate –
- (a) is committed with the consent or connivance of a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, or
 - (b) is attributable to neglect on the part of such a person.
- (2) That person, as well as the body corporate, commits the offence.
- (3) In sub-paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body.

SCHEDULE 7

Section 71

INDEX OF DEFINED EXPRESSIONS

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SCHEDULE 8

Section 78

AVIATION SECURITY: MINOR AND CONSEQUENTIAL AMENDMENTS

Civil Aviation Act 1982 (c. 16)

- 1 Part 1 of the Civil Aviation Act 1982 (administration) is amended as follows.
- 2 In section 11 (charges by CAA) at the end insert—
 - “(8) References in this section to functions of the CAA include functions conferred by or under Part 2 of the Aviation Security Act 1982 on authorised persons (as defined in that Part) to the extent that the functions are carried out by persons authorised by the CAA.”
- 3 In section 20 (supplementary provisions with respect to functions of the CAA) at the end insert—
 - “(5) References in this section to functions of the CAA include functions conferred by or under Part 2 of the Aviation Security Act 1982 on authorised persons (as defined in that Part) to the extent that the functions are carried out by persons authorised by the CAA.”

Aviation Security Act 1982 (c. 36)

- 4 Part 2 of the Aviation Security Act 1982 (protection of civil aviation against acts of violence and other unlawful interference) is amended as follows.
- 5 For the heading before section 11 substitute “Information”.
- 6 (1) Section 11 (power to require information) is amended as follows.
- (2) In subsection (1) –
- (a) for “The Secretary of State” substitute “A relevant authority”,
 - (b) for “the Secretary of State”, in each place, substitute “the authority”, and
 - (c) for “his functions” substitute “functions conferred by or”.
- (3) After that subsection insert –
- “(1A) Each of the following is a relevant authority for the purposes of this section –
- (a) the Secretary of State, and
 - (b) the CAA.”
- (4) In subsections (2) to (4) and (6) for “Secretary of State”, in each place, substitute “relevant authority”.
- (5) In subsection (4) for “him” substitute “the authority”.
- (6) In subsection (6) –
- (a) after “person” insert “by a relevant authority”, and
 - (b) after “varied” insert “by the relevant authority”.
- (7) Accordingly, in the heading of that section omit “for Secretary of State”.
- 7 Before section 11A insert –
- “Designation of security restricted areas”.*
- 8 (1) Section 11A (designation of security restricted area) is amended as follows.
- (2) After subsection (4) insert –
- “(4A) Before approving an application without modifications the Secretary of State shall consult the CAA.”
- (3) In subsection (5), before paragraph (a) insert –
- “(za) the CAA,”.
- (4) In subsection (8), before paragraph (a) insert –
- “(za) the CAA,”.
- 9 Before section 12 insert –
- “Directions”.*
- 10 In section 12(3) (power to impose restrictions in relation to aircraft) for “the Civil Aviation Authority” substitute “the CAA”.
- 11 In section 15(2) (matters which may be included in directions under section 12) for “the Civil Aviation Authority” substitute “the CAA”.

12 (1) After section 17 insert –

“17A Copies of directions etc for CAA

- (1) The Secretary of State must give the CAA a copy of –
 - (a) each direction under section 12, 13, 13A or 14, and
 - (b) each direction varying or revoking such a direction.
- (2) The Secretary of State must inform the CAA of each notification given under section 17.”

(2) The amendment made by sub-paragraph (1) applies only in relation to directions and notifications given on or after the day on which this paragraph comes into force.

13 (1) Section 18A (enforcement notices) is amended as follows.

(2) Omit subsection (3).

(3) After that subsection insert –

- “(4) Where a person authorised in writing by the Secretary of State for the purposes of this Part of this Act serves an enforcement notice, the Secretary of State must give the CAA a copy of the notice.
- (5) Where a person authorised in writing by the CAA for the purposes of this Part of this Act serves an enforcement notice, the CAA must give the Secretary of State a copy of the notice.”

14 (1) Section 18D (objections to enforcement notices) is amended as follows.

(2) After subsection (3) insert –

- “(3A) On receipt of an objection to an enforcement notice under subsection (1) the Secretary of State must –
- (a) give a copy to the authorised person who served the enforcement notice,
 - (b) allow the person making the objection and the authorised person who served the enforcement notice an opportunity to make written or oral representations to the Secretary of State or a person appointed by the Secretary of State, and
 - (c) give a decision notice to the person who made the objection and to the authorised person who served the enforcement notice.”

(3) In subsection (4) –

- (a) for the words from the beginning to “on the objector” substitute “In this section “decision notice” means”, and
- (b) in paragraph (b) for “notice under this subsection” substitute “decision notice”.

(4) After that subsection insert –

- “(4A) Where the enforcement notice was served by a person authorised in writing by the CAA for the purposes of this Part of this Act, the Secretary of State must give a copy of the following to the CAA as well as to the authorised person –
- (a) the objection to the enforcement notice, and
 - (b) the decision notice.”

- (5) In subsection (5) for “a notice under subsection (4) above”, in both places, substitute “a decision notice”.
- 15 In section 20A(3) (aviation security services: approved providers) –
- (a) after paragraph (e) insert –
 - “(ea) make provision for employees of persons who are listed in respect of a service to be treated as listed in respect of that service in specified circumstances;”,
 - and
 - (b) in paragraph (f), after “are listed” insert “, or employees of such persons,”.
- 16 (1) Section 20B (detention directions) is amended as follows.
- (2) After subsection (2) insert –
 - “(2A) Where a person authorised in writing by the Secretary of State for the purposes of this Part of this Act gives a detention direction, the Secretary of State must give the CAA a copy of the direction.
 - (2B) Where a person authorised in writing by the CAA for the purposes of this Part of this Act gives a detention direction, the CAA must give the Secretary of State a copy of the direction.”
 - (3) In subsection (5), before paragraph (a) insert –
 - “(za) give a copy to the authorised person who gave the direction,”.
 - (4) After subsection (5) insert –
 - “(5A) Where the detention direction was given by a person authorised in writing by the CAA for the purposes of this Part of this Act, the Secretary of State must give a copy of the following to the CAA as well as to the authorised person –
 - (a) the objection to the direction, and
 - (b) the notice of the Secretary of State’s decision under subsection (5).”
- 17 In section 21 (application of provisions to air navigation installations), in subsection (7) –
- (a) after “in section” insert “14A, 16A,”, and
 - (b) after “17,” insert “17A,”.
- 18 (1) Section 21G (duty to report certain occurrences) is amended as follows.
- (2) In subsection (1) after “to him” insert “or the CAA”.
 - (3) In subsection (2) after “consult” insert “–
 - (a) the CAA, and
 - (b) ”.

Application of Part 3 of Regulatory Enforcement and Sanctions Act 2008 (“the RESA 2008”)

- 19 The offences under section 11 of the Aviation Security Act 1982 (as amended by this Schedule) (“the ASA 1982”) in connection with providing, or failing to provide, information to the Civil Aviation Authority are to be treated for the purposes of Part 3 of the RESA 2008 (civil sanctions) as contained in Part

2 of the ASA 1982 immediately before the day on which the RESA 2008 was passed.

SCHEDULE 9

Section 79

AVIATION SECURITY: FURTHER PROVISION ABOUT TRANSFER SCHEMES

Transfer

- 1 (1) The property, rights and liabilities that may be transferred by a scheme under section 79 (a “transfer scheme”) include property, rights and liabilities that would otherwise be incapable of being transferred.
- (2) A transfer scheme may –
 - (a) create rights, or impose liabilities, in relation to property transferred by the scheme,
 - (b) create new rights and liabilities as between the Crown and the Civil Aviation Authority (“the CAA”), and
 - (c) apportion property, rights and liabilities between the Crown and the CAA.
- (3) A transfer scheme may include consequential, incidental, supplementary and transitional provision and savings.

Employment

- 2 (1) This paragraph has effect where rights, powers, duties and liabilities relating to an individual’s contract of employment are transferred in accordance with a transfer scheme.
- (2) The transfer does not break the continuity of the individual’s employment and accordingly –
 - (a) the individual is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (redundancy) as having been dismissed by virtue of the transfer, and
 - (b) the individual’s period of employment in the civil service of the Crown counts as a period of employment with the CAA for the purposes of that Act.
- 3 (1) This paragraph has effect where –
 - (a) a transfer scheme contains provision for the transfer of rights, powers, duties and liabilities relating to an individual’s contract of employment, but
 - (b) before the transfer takes effect, the individual informs the Secretary of State or the CAA that the individual objects to the transfer.
- (2) Those rights, powers, duties and liabilities are not transferred under the transfer scheme.
- (3) The individual’s contract of employment is terminated immediately before the day on which the transfer would occur.
- (4) The individual is not, for any purpose, to be regarded as having been dismissed.

- (5) Nothing in this paragraph affects the individual's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the individual's detriment in the individual's working conditions.
- 4 (1) If a transfer scheme contains provision for the transfer of rights, powers, duties and liabilities relating to an individual's contract of employment, it may include provision with respect to the individual's eligibility to become a member of a pension scheme by virtue of employment with the CAA.
- (2) The transfer scheme may include provision with respect to rights of, or rights or liabilities in respect of, the individual under—
- (a) a pension scheme of which the individual may become a member by virtue of employment with the CAA, or
 - (b) a pension scheme of which the individual is a member by virtue of employment immediately before the transfer.
- (3) In this paragraph "pension scheme" includes a scheme made under section 1 of the Superannuation Act 1972 (superannuation schemes as respects civil servants etc).

Civil servants treated as employed under a contract of employment etc

- 5 (1) This Schedule applies with the following modifications in relation to employment in the civil service of the Crown on terms which do not constitute a contract of employment.
- (2) Where an individual holds such employment—
- (a) the individual is to be treated as employed under a contract of employment,
 - (b) the terms of the employment in the civil service of the Crown are to be treated as the terms of that contract, and
 - (c) the reference in paragraph 3 to dismissal is to be treated as a reference to termination of the employment in the civil service of the Crown.

Certificate

- 6 A certificate issued by the Secretary of State that any property, rights, powers, duties or liabilities have been transferred to the CAA under a transfer scheme is conclusive evidence of the transfer.

Validity

- 7 A transfer under a transfer scheme does not affect the validity of anything done by or in relation to the Crown before the transfer takes effect.

Continuity

- 8 (1) A transfer scheme may provide for things done by or in relation to the Crown for the purposes of or in connection with anything transferred under a transfer scheme to be—
- (a) treated as done by or in relation to the CAA or its members or employees, or
 - (b) continued by or in relation to the CAA or its members or employees.

- (2) A transfer scheme may, in particular –
 - (a) make provision about the continuation of legal proceedings, and
 - (b) make provision for references to the Crown in documents to be treated as references to the CAA.

SCHEDULE 10

Section 87

APPEALS AGAINST PENALTIES

Appeals against penalties

- 1 (1) A person may appeal to the Competition Appeal Tribunal against a penalty imposed on the person under section 83 or 84.
- (2) The appeal may be against one or more of the following –
 - (a) a decision to impose the 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) The appeal may be made only on one or more of the following grounds –
 - (a) that the decision is based on an error of fact;
 - (b) that it is wrong in law;
 - (c) that it is based on the wrong exercise of a discretion.
- (4) 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

- 2 (1) The Competition Appeal Tribunal must decide an appeal under this Schedule –
 - (a) on the merits, and
 - (b) by reference to the grounds of appeal in the notice of appeal.
- (2) It may –
 - (a) confirm or set aside the notice or penalty;
 - (b) give the CAA such directions as 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 power to do apart from the direction.
- (4) The CAA must comply with directions under this paragraph.

Further appeals

- 3 (1) An appeal lies to the appropriate court on a point of law arising from a decision of the Competition Appeal Tribunal under paragraph 2, 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
 - (b) the appropriate court.
- (4) “The appropriate court” means—
 - (a) in the case of an appeal from proceedings in England and Wales or Northern Ireland, the Court of Appeal, or
 - (b) in the case of an appeal from proceedings in Scotland, the Court of Session.

DRAFT CIVIL AVIATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the draft Civil Aviation Bill which was published on 23 November 2011. They have been prepared by the Department for Transport (DfT) in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. This draft Bill contains measures intended to modernise the regulatory framework for civil aviation in the United Kingdom through reforms to the legislative framework for the economic regulation of airports, the legislative framework of the Civil Aviation Authority (CAA), and the transfer of certain aviation security functions from the Secretary of State to the CAA.

Reforms to the framework for the economic regulation of airports

4. The House of Commons Transport Committee's 2006 report *The Work of the Civil Aviation Authority* recommended that DfT should carry out a review of the CAA, including the central elements of the framework for the economic regulation of airports (report available at: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtran/809/80902.htm>).
5. In 2008, the Government announced that such a review would take place and would be informed by advice from an independent panel of experts. The panel's recommendations were published in December 2009, following a public consultation in March 2009 (<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/expertpanelopinion> and

<http://www2.dft.gov.uk/consultations/archive/2009/ukairports/index.html>).

6. Advice from the expert panel, and the response to the public consultation, supported the case for reform to the framework for the economic regulation of airports, and in December 2009 the previous Government published its decision document which set out the case for reform in this area. (<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/decisiondocument/>).

7. In the Queen's Speech of May 2010, the Government announced its intention to reform the framework for the economic regulation of airports. In Written Ministerial Statements in July 2010 and March 2011, the Government provided Parliament with further detail on the direction of the reforms, and the intention to bring forward legislation.

8. In most sectors of the economy, the degree of competitive rivalry between firms and the threat of competition law is sufficient to protect consumers from the risk of firms exploiting their market power, for example by charging unreasonably high prices or by providing unreasonably low levels of service quality.

9. However in some sectors of the economy – typically those which used to be state-owned monopolies and where circumstances limit the prospect for effective competition – economic regulation is needed to protect consumers. Such regulation has typically capped the prices that dominant firms can charge in order to promote efficiency, while providing them with a fair return on their investments. In the UK economic regulation is carried out by independent expert regulators in the following sectors: gas and electricity (Ofgem), water (Ofwat), telecoms and post (Ofcom), rail (Office of Rail Regulation) and airports and air traffic services (CAA)¹.

10. The current legislative framework for airport economic regulation was established under Part 4 of the Airports Act 1986. Under this regulatory framework the Secretary of State is responsible for deciding which airports should be “designated” for price cap regulation. The CAA is then responsible for regulating these airports by setting the maximum amount they can charge airlines over a five year period, and setting service quality conditions linked to these charges.

11. Consultations on reforming the regulatory framework have illustrated that the aviation industry, the regulator and other stakeholders believe the current regime is burdensome, disproportionate and in need of reform. The Competition Commission concluded in its 2009 report *BAA airports market investigation: A report on the supply of airport services by BAA in the UK* (available on the Competition Commission website) that the current legislative framework distorts competition

¹ In addition in Northern Ireland the Northern Ireland Utility Regulator regulates the gas electricity and water sectors and in Scotland the Water Industry Commission for Scotland regulates the water industry.

between airlines by adversely affecting the level, specification and timing of investment and the appropriate level and quality of service to passengers and airlines.

12. There is general agreement that the current framework for airport economic regulation does not meet the standards expected from a modern regulatory regime. The current regime would not permit the CAA to reduce the scope or degree of regulation - for example by monitoring prices and regulating certain aspects of service quality - even if this would benefit passengers and reduce costs for industry.

13. Reform to the framework of the economic regulation of airports is also prompted by the significant changes that have taken place in the aviation sector since the enactment of the Airports Act 1986, including large increases in passenger volumes, the expansion of regional airports and entry by low-cost airlines.

14. The economic regulation measures contained in this Bill are intended to provide the CAA with a clear primary duty to further the interests of passengers and owners of cargo; provide a more flexible and targeted set of regulatory tools (including a licensing regime); make the CAA's decisions more accountable through a system of appeals; and reduce unnecessary political involvement and regulation.

15. The Bill also grants the CAA powers to enforce competition law which are held concurrently with the Office of Fair Trading. These powers include the enforcement of competition law in the airport operation services sector and the ability to make market investigation references to the Competition Commission for the airport operation services sector. A number of economic regulators (including the CAA) already have concurrent powers with the OFT in respect of sectors which fall within their responsibility. These sectors include telecommunications, gas, electricity, air traffic services, water and sewerage, and railway services.

Aviation security

16. The Bill provides for the transfer of certain aviation security functions from the Secretary of State to the CAA, including the review of aviation security directions, advice and assistance to industry and compliance. The Secretary of State remains responsible for aviation security policy and making aviation security directions under the Aviation Security Act 1982.

17. The Bill also enables transfer schemes to be made in connection with the transfer of aviation security functions to the CAA.

Reform to the legislative framework of the CAA

18. The Transport Committee report *The Work of the Civil Aviation Authority* also

recommended that the DfT should carry out a fundamental review of the CAA itself. In 2007 the Government commissioned Sir Joseph Pilling to conduct an independent strategic review. The report was published in June 2008 (<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/aviation/domestic/pillingreview.PDF>). Sir Joseph Pilling's recommendations have informed some of the CAA reform measures contained in the Bill. Some of his governance recommendations have been implemented without the need for legislation, for example the creation of a separate Chair and Chief Executive. Others require primary legislation.

19. The Bill makes a number of changes to the CAA's legislative framework, as follows:

CAA membership

20. Currently, the Secretary of State for Transport appoints all the members of the CAA's board and, with Treasury consent, determines their remuneration. Sir Joseph Pilling, in his 2008 *Report of the strategic review of the CAA* recommended that modernising the CAA's governance structure would help the CAA to maintain its general standing and record of success. Some of his governance recommendations have been implemented without the need for legislation, for example the appointment of a Chief Executive as well as a chair. Another recommendation was that the CAA Board should be allowed to appoint its own executive directors and determine their remuneration packages. The Bill contains provisions that make this change.

Civil sanctions

21. The Bill enables the CAA to make use of alternative civil sanctions alongside existing criminal penalties.

Criminal proceedings

22. The CAA currently investigates and prosecutes aviation-related offences on behalf of the Crown, pursuant to arrangements to provide assistance to the Secretary of State under section 16 of the Civil Aviation Act 1982. The Bill makes express provision for the CAA to institute criminal proceedings as part of its enforcement function under section 20 of the Civil Aviation Act 1982 to ensure that costs associated with carrying out enforcement work, including prosecutions, will be recoverable from the industry under the new charging scheme arrangements rather than the taxpayer, as is currently the case under present arrangements.

CAA's charging schemes

23. The CAA's charging schemes are the mechanism by which it recovers its regulatory costs from industry. These normally come into force on 1 April each year following consultation with the Secretary of State. Under the Civil Aviation Act 1982, the CAA is required to allow a minimum of 60 days between publication of its proposed charges and those charges coming into force. The Bill introduces a statutory obligation on the CAA to consult charge-payers and reduces the 60-day notice period

to 14 days.

Information, guidance and advice

24. The Bill contains provision creating a new duty for the CAA to publish or arrange for the aviation sector to publish such information and advice as the CAA considers appropriate: (i) to assist users (passengers or freight service users) or potential users of air transport to compare services and make more informed choices; and (ii) to inform the public about the environmental effects (including emissions and noise) of civil aviation in the UK and measures taken to limit the adverse environmental effects. The CAA may also publish best practice guidance and advice for the aviation sector aimed at either improving service standards for users or limiting the adverse environmental effects of civil aviation in the UK. The CAA must consult on its policy for carrying out these new functions and have regard to the principle that the benefits should outweigh any adverse effects.

Overview and structure of the Bill

25. The Bill has three Parts and ten Schedules. The Bill makes changes to a number of existing Acts, most notably the Aviation Security Act 1982, Civil Aviation Act 1982, Airports Act 1986, Transport Act 2000 and the Regulatory Enforcement and Sanctions Act 2008. The arrangement of the Bill is as follows:

Part 1: Airports

Chapter 1: Regulation of Dominant Airports

- Clauses 1-3: General duties*
- Clauses 1-2: Prohibition*
- Clauses 6-14: Dominant airports*
- Clauses 15-17: Licences*
- Clauses 18-21 : Licence conditions etc.*
- Clauses 22-23 : Modifying licences*
- Clauses 24-30: Appeals against licence conditions etc.*
- Clauses 31-45: Enforcement of licence conditions*
- Clauses 46-47: Revocation of licence*
- Clauses 48-53: Obtaining information*
- Clauses 54-56: Penalties*
- Clause 57: Disclosing information*

Chapter 2: Competition

- Clauses 58-63: Competition*

These notes refer to the draft Civil Aviation Bill as published on 23 November 2011

Chaper 3 :General Provision

Clauses 64-71: Interpretation

Clauses 72-75: Other general provision

Part 2: Other Aviation Matters

Clauses 76-79: Aviation security

Clauses 80-90: Provision of information about aviation services

Clauses 91-97: Further provision about CAA

Clauses 98-99: Miscellaneous

Part 3: Final provisions

Clauses 100-103: Final provisions

Schedules 1-10

Schedule 1: Appeals against determinations

Schedule 2: Appeals under section 24 and 25

Schedule 3: Appeal against orders and penalties

Schedule 4: Appeals against revocation of licenses

Schedule 5: Appeals against penalties: information

Schedule 6: Restrictions on disclosing information

Schedule 7: Index of defined expressions

Schedule 8: Aviation security: minor and consequential amendments

Schedule 9: Aviation security: Further provision about transfer schemes

Schedule 10: Appeals against penalties

COMMENTARY

PART 1 – AIRPORTS

CHAPTER 1 – REGULATION OF DOMINANT AIRPORTS

General duties

Clause 1: CAA’s general duty

26. *Subsection (1)* provides that the CAA must carry out its functions under this Chapter of Part 1 of the Bill in a way which it thinks will further the interests of *users of air transport services* regarding the range, availability, continuity, cost and quality of *airport operation services* (the “primary duty”). The CAA must do so, where appropriate, by promoting competition in the provision of airport operation services (*subsection (2)*).

27. “Airport operation services” are defined in clause 66 and “air transport services” are defined in clause 67.

28. The primary duty refers specifically to the interests of users of air transport services in respect of airport operation services: it does not empower the CAA to take into account whatever general interests these persons might have in other capacities (for example as a local resident).

29. There may be conflicts between the interests of users of air transport services. For example, current users may not want to pay for investment that benefits future users. *Subsection (5)* empowers the CAA to determine how to fulfil its primary duty in cases where such conflicts arise.

30. *Subsection (3)* lists a number of matters to which the CAA must have regard in performing its duties under subsections (1) and (2). The duty to have regard to these matters does not, individually or collectively, override the CAA’s primary duty. The matters to which the CAA must have regard under subsection (3) include:-

- a) under subsection (3)(a), the need to secure that each licence holder is able to finance its provision of relevant services. Whilst this should require the CAA to encourage efficient and economic investment by allowing a reasonable return over time, the financing duty does not require the CAA to ensure the financing of regulated airports in all circumstances, for example the regulator would not be required to adjust regulatory decisions in order to take account of an airport’s particular financing arrangements or put the interests of users at risk

by making them pay for an inefficient operator's financing decisions.

- b) under subsection (3)(b) and (c), outcomes relating to demand for airport operation services and the need to promote economy and efficiency in the provision of such services, that one would expect in a competitive airports market where airports provide the services demanded by passengers at minimum cost. These matters reflect the fact that the ultimate aim of economic regulation is, as far as is possible, to replicate the outcomes of a competitive market.
- c) guidance issued to the CAA by the Secretary of State on how it carries out its functions (subsection (3)(d)). For example the Secretary of State will be issuing guidance to the CAA on the Secretary of State's preferred approach to resilience licence conditions after Royal Assent.
- d) any international obligations notified by the Secretary of State to the CAA (subsection (3) (e)).

Clause 2: Duty not to impose or maintain unnecessary burdens

31. This clause imposes a duty on the CAA not to impose or maintain unnecessary burdens. The duty applies to all of the CAA's functions under this Chapter of Part 1 of the Bill.

Clause 3: Secretary of State's general duty

32. In exercising any function under this Chapter of Part 1 of the Bill the Secretary of State will be subject to similar duties to those to which the CAA is subject under clause 1.

Prohibition

Clause 4: Prohibition

33. If an operator of a dominant area located at a dominant airport does not have a licence for the dominant airport area, then clause 4 states the operator is prohibited from levying charges for airport operation services.

34. "Dominant airport areas" and "dominant airports" are defined in clause 6.

35. The prohibition applies to all charges for airport operation services at the airport (other than those in respect of an area for which the operator has a licence), not just those levied in respect of the dominant airport area for which the licence is required. So, for example, if there was one operator of the entire airport but the area comprising the runway was the only dominant area, the operator could not levy charges for any airport operation services at the entire airport without a licence which

covered the runway.

36. The licence must include a provision specifying the area covered by the licence (see clause 21(1)). Therefore if a licensed operator of one dominant area at an airport became the operator of another dominant area which is not covered in its existing licence, the prohibition would apply to the newly acquired dominant area and any other area within the airport operated by that person not covered by its original licence.

Clause 5: Prohibition: exemption

37. Clause 5 states that if a person is the operator of an airport area before the area becomes a dominant area, or before the airport becomes a dominant airport, then the operator is exempt from the prohibition until a licence for that airport area is granted and takes effect. Under clause 15, such an operator is treated as having made and published an application for a licence. This is designed to protect existing operators of airport areas who would otherwise subsequently become subject to the prohibition.

38. Clause 5 does not protect new operators of airport areas which are already dominant areas located at dominant airports (for example, an area comprising the terminals and runways at London Heathrow); otherwise a change in management control would result in the new operator of the dominant airport area not being subject to regulation.

Dominant airports

Clause 6: Dominant areas and dominant airports

39. The prohibition (clause 4) states that operators of dominant areas located at dominant airports require a licence to levy charges for airport operation services. This clause explains what comprises a dominant airport area and a dominant airport.

40. This clause introduces the concept of an ‘airport area’ (and therefore a ‘dominant airport area’) to allow for the possibility of there being more than one operator at an individual airport. This could be the case, for example, if an airline acquired or leased a terminal building. As there can be more than one ‘airport area’ at an airport, it follows that there can be more than one ‘operator of an airport area’ at an airport.

41. This differs from the approach used in the Airports Act 1986, which refers to an airport operator as “the person for the time being having the management of an airport, or, in relation to a particular airport, the management of that airport”. That definition assumes there will only be one operator at an airport.

42. Clause 6 states that an airport area is dominant if the CAA makes a determination that the market power test is met in relation to the area and publishes a

notice to that effect.

43. The clause introduces the concept of a ‘core area’ and states that an airport is dominant only if there is some overlap between one or more dominant airport areas and all or some of the airport’s core area. Non-core airport areas include car parks with pedestrian access to the terminal building or pick-up and drop-off points. Therefore if the only dominant airport area at airport X comprised the pick-up and drop-off points, this clause states that airport X would not be a dominant airport.

Clause 7: Market power test

44. Clause 6 states that an airport area is dominant if the CAA publishes a determination that the market power test is met in relation to the area. This clause states that the market power test is met in relation to the airport area only if the CAA is satisfied that tests A, B and C are all met by the operator of that airport area.

45. There is an important distinction: tests A, B and C are applied to the *operator* of the airport area; in contrast the market power determination is made in relation to an airport *area*. The determination applies to an area, rather than to the operator, to allow for it to remain valid in the event that a new operator takes over management control of the assets. Clause 6 states that a market power determination, once published by the CAA, will continue to have effect until overtaken by a subsequent determination. So if operator A acquires a dominant airport area (which is located at a dominant airport) from operator B, the market power determination and therefore the prohibition will apply to operator A².

46. Clause 7 states that tests A, B and C all have to be met by the operator of an airport area for the market power test to be met. These tests are designed to ensure that operators of airport areas are only subject to economic regulation if: (A) the operator has or is likely to acquire substantial market power; (B) competition law on its own is not sufficient to address the risk the operator abuses its market power; and (C) the benefits of regulating the operator outweigh the costs.

47. *Subsections (6) and (7)* limit the circumstances in which test A is met.

48. Subsection (6) states that test A is only met if:

- the product market in which the operator has (or is likely to acquire) substantial market power is a market for services which include or comprise one or more airport operation services; and

² Unless there is an operator determination stating that operator B is the operator of the dominant airport area. In practice it is expected that operator B would notify the CAA of the expected change of operator. The CAA would then withdraw the original operator determination and may make a further operator determination on operator A. Otherwise, operator B would remain subject to regulation as the operator of an area over which it no longer has requisite management control. (See also notes on clauses 11 and 13 for “operator determinations”).

- the geographic market in which the operator has (or is likely to acquire) substantial market power includes, comprises or forms part of the airport area.

49. Subsection (6) would therefore prevent an operator being regulated solely on the basis that it satisfies the market power test in relation to a different product or geographic market.

50. Subsection (7) states that in conducting test A, if there is an operator of an airport area which includes all or part of the core area as well as other areas in the airport, the CAA must identify a market for one or more airport operation services provided in a core area and geographically the market must include the core area. So for example if an operator controlled an entire airport (which includes a core area) but its substantial market power was limited to a market comprising car parks with pedestrian access to the terminal building (which is not a core area), then test A would not be met.

51. It is envisaged that in conducting the market power test the CAA will take due account of all applicable guidelines and recommendations relating to the analysis of markets and market power, which have been produced by the UK and European Competition Authorities.

Clause 8: Market power determinations and Clause 9: Publication of market power determinations

52. Clause 8 empowers the CAA to determine whether or not the market power test is met in relation to an airport area whenever it considers it appropriate to do so. This is defined as a “market power determination”.

53. In order to comply with European law (Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges), this clause also requires the CAA to determine whether the market power test is met in relation to an airport area in certain specified circumstances and if requested by certain specified people. Those specified circumstances are listed in *subsection (2)* and the exceptions to this are listed in *subsection (5)*.

54. When a request is made for a market power determination in respect of an airport area, the CAA is empowered to split that into different requests for different parts of that area. Or it could consider an area including, but wider than, the area for which the request is made. For example, if someone requested a market power determination in relation to an area which comprises the entire airport and there is more than one operator at that airport, the CAA would need to consider the areas managed by the different operators separately.

55. *Subsection (7)* of clause 8 states that the CAA should have regard to the market(s) in which the operator has substantial market power (test A) when it makes a market power determination in relation to an airport area. The following simple example illustrates what is meant here. Imagine the CAA concluded that the operator

was dominant in the provision of runways, but not in the provision of passenger terminals. In such a case one would not necessarily expect the market power determination to apply to an area which includes the passenger terminals unless there are particularly good reasons for doing so. In such circumstances subsection (7) would not prohibit the CAA from making a market power determination in relation to an area that included the passenger terminals, but it means that the CAA would need good reasons for doing so.

Clause 10: Operators of areas, Clause 11: Operator determinations and Clause 12: Publication of operator determinations

56. Clause 10 defines an operator of an airport area as the person with overall responsibility for the management of all of that area. This means that where two separate entities both have some form of management control over an airport area (for example the lessee and lessor of a passenger terminal building), only one of them can comprise the operator of the area for the purposes of this Part of the Bill.

57. Clause 11 empowers the CAA to determine who has overall responsibility for the management of the area, including in cases where one or more separate entities have some form of management control over the airport area. This is defined as an “operator determination”. Clause 10(4) sets out the factors that the CAA should consider when making an operator determination.

58. Clause 11(5) provides that the CAA must make an operator determination in relation to a person, if requested to do so by that person. *Subsections (6) and (7)* list the exceptions to this requirement.

59. When a request is made for an operator determination in respect of an airport area, the CAA is empowered to split that into different requests for different parts of that area. Or it could consider an area including, but wider than, the area for which the request is made.

60. An operator determination, once published by the CAA, will continue to have effect until the CAA publishes a notice withdrawing it. If the CAA withdraws the operator determination without making a further operator determination then the identity of the operator will depend on the facts and any regulations which have been introduced by the Secretary of State under powers conferred on him in clause 10(2).

Clause 13: Advance determinations

61. To give prospective operators greater certainty about whether they would require a licence to levy charges, this clause empowers the CAA to make market power determinations and operator determinations in advance of a particular event taking place. For example, suppose a third party was considering whether to lease a passenger terminal building from the current operator. This clause empowers the CAA to consider the terms of the lease and determine which party would be the operator of the terminal building if the lease was entered into. If the CAA determined that the third party would be the operator of the terminal building, this clause also

empowers the CAA to determine whether the third party satisfies the market power test and therefore require a licence if it were to enter into the lease.

62. The advance determination(s) would not take effect until the circumstances described in the determination(s) arose. The CAA is empowered to delay publication of an advance determination if the circumstances have not yet arisen and doing so would involve disclosing commercially sensitive information.

Clause 14: Appeals against determinations

63. This clause introduces Schedule 1 where provisions relating to appeals against determinations are set out.

Schedule 1: Appeals against determinations

64. Schedule 1 provides a right of appeal to the Competition Appeal Tribunal and procedure relating to appeals and on decisions on appeal. The Competition Appeal Tribunal Rules of procedure (under section 15 of the Enterprise Act 2002) also apply insofar as the rules set out in this Schedule do not override them.

65. Paragraph 1 of Schedule 1 states which parties may appeal a market power determination and operator determination to the Competition Appeal Tribunal and the grounds on which such appeals can be made.

66. Paragraph 2 of Schedule 1 states that appellants have 60 days to appeal a market power or operator determination. The time period for appealing starts on whichever of the following days is the later:

- the day on which the determination is published; or
- the day on which the reasons for the determination are published.

67. Paragraph 2 states that although the Tribunal's rules of procedure can amend the time period within which an appeal can be made, the rules cannot alter the day on which the time period commences.

68. Paragraph 3 states the decisions that may be taken by the Competition Appeal Tribunal following an appeal and paragraph 4 makes provision for further appeals on points of law.

Licences

69. Processes for the application, the granting and refusal of the licence are covered by clauses 15 to 17.

Clause 15: Application for licence

70. Persons who operate a dominant area at a dominant airport require a licence to levy charges and this clause states the requirements on the applicant and the CAA when an application for a licence is made. *Subsections (4) and (5)* provide that if a

person is the operator of an airport area before the area or the airport becomes dominant, then that person will be treated as having already made and published an application for a licence.

Clause 16: Granting licence

71. This clause states the process the CAA must comply with before granting a licence and before the licence comes into force. This clause includes a requirement for the CAA to consult for a reasonable period on proposed licence conditions and states that a licence may not include conditions which differ significantly from those on which it has consulted.

72. After the notice that the licence is granted has been published by the CAA, the licence cannot come into force for at least six weeks. The notice must specify matters that include the licence conditions, the reasons for those conditions, how the CAA has taken into account representations made and the reasons for any differences from the conditions initially proposed. This is stated in clause 16(7). An appeal against the CAA's decision to include or exclude a licence condition by the licence holder and/or airlines that are materially affected can be made during the six week period after publication of the notice. Appeals about the inclusion or exclusion of conditions in a new licence are at clause 24 and Schedule 2.

73. Paragraph 7 of Schedule 2 states that if an application to suspend a licence condition is made in the six week period, the licence condition does not come into effect for nine weeks from the date the licence was granted. This extension is to give the Competition Commission at least three weeks to consider the application for a direction to suspend the licence condition before it would otherwise come into effect. The grounds upon which such a direction may be given are set out a paragraph 10(3) and its effects at paragraph 10(4).

Clause 17: Refusing to grant licence

74. Clause 17 states the grounds on which the CAA may refuse to grant a licence and the process the CAA must follow should it decide to refuse to grant a licence, including a requirement to consult for at least 30 days before doing so. The circumstances where the CAA may refuse a licence are stated in *subsection (1)*. These include an application from a person whose licence for that airport area has previously been revoked. Otherwise, they comprise circumstances where a licence should not be required.

Licence conditions etc.

75. The CAA will be seeking views on a draft indicative licence intended to give Parliament a flavour of what the licensing regime might mean in practice. This can be found on the CAA's website.

Clause 18: Licence conditions

76. This clause states that the CAA may include in the licence any conditions it considers necessary and expedient having regard to the risk that the licence holder may engage in conduct amounting to an abuse of substantial market power. It is further empowered to make any other licence conditions it considers necessary or expedient having regard to its duties under clause 1: in each case subject to *subsections (4) to (6)*.

77. Generic examples of provisions which may be included in licence conditions are set out in *subsection (2)*. The examples are neither a prescriptive nor an exhaustive list of provisions that may be included.

78. *Subsections (4) and (5)* state that a condition of the licence may be modified without recourse to the standard licence modification process (set out in clauses 22 to 30), provided the specific requirements of subsection (4) are met in that licence condition. However, the proposed inclusion of such a provision in the licence would itself be subject to the standard licence modification process (including possible appeal to the Competition Commission).

79. The requirements to be met under subsection (4) are that the licence condition specifies or describes the circumstances in which it may be modified, the period(s) within which the power may be exercised and the types of modification which may be made. For example, a licence condition may require information to be provided by a specified date each year but provide also that the CAA may replace that date with a different date at any time in the next 3 years if the number of passenger movements in a stated period exceeds a stated figure.

80. Such a provision may be modified through the standard licence modification process or through its own self-modifying provisions.

81. Subsection (6) prohibits the CAA from including a licence condition containing an exception (a “derogation”) relating to, or operating by reference to, financial arrangements that had been entered into before the Bill is enacted where that derogation is time- or event-limited, or where the derogation comes into existence on the CAA giving its consent or approval.

82. *Subsection (7)* states that a licence condition no longer has effect when the licence holder is not the operator of an airport area or when the CAA makes a determination that the airport area is no longer a dominant area located at a dominant airport. Please see also notes for clauses 10 and 11.

Clause 19: Licence conditions: price control

83. Clause 19 requires the CAA to impose price control conditions where it

considers this necessary or expedient having regard to its duties under clause 1.

84. *Subsection (2)* requires price control conditions to be time-limited.

85. *Subsection (3)* provides that a licence condition is a price control condition to the extent that it regulates prices by (a) specifying the amount that may be charged or that the amount should be determined in accordance with the condition; or (b) requiring that the amount charged should be approved by the CAA. *Subsection (4)* provides that provisions for a price control condition may be made by reference to the amount charged for particular goods or services or to a range of goods or services.

Clause 20: Licence conditions: charges

86. Clause 20 provides that a licence may include conditions requiring payment of the CAA's charges for its functions under this Chapter determined by a scheme or regulations made under section 11 of the Civil Aviation Act 1982.

Clause 21: Licence area and licence period etc

87. Under clause 21, the licence must specify the airport and the airport area or areas for which it is granted.

88. The circumstances in which the licence may be revoked by the CAA must be set out in the licence. The licence must also provide that it may only be revoked in accordance with clause 46 (which sets out the procedural requirements).

89. *Subsection (5)* provides that if the CAA grants a licence in advance of a person becoming the operator (of all or part of an area), the licence does not come into force until that person becomes the operator (of all or part of the area).

Modifying licences

Clause 22: Modifying licence conditions and licence area

90. This clause provides the process the CAA must comply with for modifying conditions of a licence or the area for which the licence is granted. "Modifying" is defined in clause 70 and comprises adding, removing or altering licence conditions.

91. The process requires the CAA to specify the proposed modification, give reasons for and state the effect of the proposed modification and consider any representations received (*at subsection (2) and (4)*).

92. If after doing so the CAA decides not to make the modification it must publish its reasons (*at subsection (5)*).

93. If, following consideration of representations, the CAA wishes to make significant changes to the proposed licence modification then the process described in clause 22(2) will need to be repeated in respect of the amended proposal (*subsection*

(7)).

94. If the CAA decides to make the proposed modification to a licence condition, it will take effect from the date specified by the CAA in the notice it publishes under *subsection (6)*. This must be at least six weeks after the day which this notice is published. The notice must also state how the CAA took into account representations received and the reasons for any differences from the proposed modification.

95. During the six week period an application for a direction to suspend a licence condition may be made under paragraph 8 of Schedule 2 where an application for permission to appeal under clause 25 has been made.

96. Paragraph 9 of Schedule 2 states that if an application for a direction to suspend a licence condition is made in the six week period, the modification does not come into effect for nine weeks from the date the decision on the modification was published. This extension is to give the Competition Commission at least three weeks to consider the application for a direction to suspend the licence condition before it would otherwise come into effect. The grounds upon which such a direction may be given are set out at paragraph 10(3) and its effects at paragraph 10(4).

97. The area for which the licence is granted is neither appealable nor may it be suspended and hence the six week delay in coming into force is not required for this type of modification.

Clause 23: Restriction on power to modify

98. Clause 23 provides a restriction on the CAA's powers to modify licence conditions. It applies where a licence condition contains an exception ("derogation") relating to or operating by reference to financial arrangements entered into before clause 4 of the Bill came into force. This may occur, for example, where a ring fencing licence condition is subject to a derogation to prevent it cutting across financial arrangements entered into by the licence holder or a person connected to the licence holder before clause 4 of the Bill comes into force.

99. In these circumstances, the CAA cannot modify the licence by removing or restricting the derogation until it has determined that: (i) there has been a material change in circumstances since the derogation was granted; and (ii) the benefits of removing the derogation are likely to outweigh its costs to users of air transport services. The CAA must publish its determination on or before giving notice of its proposal to make a licence modification.

100. For example, a typical ring fencing licence condition found in other regulated sectors is a prohibition on the granting of security over assets of the regulated business. Where an operator of an airport area has existing lending in place at the time that clause 4 of the Bill comes into force which is secured on the assets of the regulated company, the regulator may choose to include it as a provision in the licence but with a derogation to indicate the prohibition on the granting of security over assets

would not be operative. In these circumstances the CAA would not be able to remove or restrict this derogation until the dual test has been satisfied.

Appeals against licence conditions etc

Clause 24: Appeal to Competition Commission: conditions of new licences

101. An appeal against a decision by the CAA to include or not to include a licence condition under clause 16 (granting licence) may be brought by either the holder of the licence (the operator of the airport area), or a provider of air transport services (an airline) whose interests are materially affected by the decision. “Air transport services” is defined in clause 67.

102. The time limit for an application for permission to appeal is set out in paragraph 1(1) of Schedule 2. The application for permission to appeal must be made within six weeks of the CAA publishing the notice of the decision to grant a licence.

Clause 25: Appeal to Competition Commission: modification of licence conditions

103. An appeal against a decision by the CAA to modify a licence condition may be brought by either the holder of the licence (the operator of the airport area), or a provider of air transport services (an airline) whose interests are materially affected by the decision. “Air transport service” is defined in clause 67.

104. The time limit for an application for permission to appeal is set out in paragraph 1(2) of Schedule 2. The application for permission to appeal must be made within six weeks of the CAA publishing the notice of its decision to modify the licence.

Clause 26: Determination of appeal, Clause 27: Determination of appeal: decision appealed against, Clause 28: Determination of appeal: time limit and Clause 29: Determination of appeal: publication etc.

105. Clause 26 states the circumstances in which the Competition Commission may allow an appeal. It may only do so to the extent that it is satisfied that the decision was based, wholly or partly, on an error of fact and/or that it was wrong in law and/or that it was based on the wrong exercise of discretion. These are the grounds on which the appellant could make an appeal.

106. Clause 27 states what the Competition Commission must do if it does or does not allow an appeal or allows only part of the appeal. In the latter cases, it may (in whole or in part) quash the decision, remit the matter to the CAA for reconsideration and decision in accordance with any directions it may give or substitute its own decision for that of the CAA.

107. Clause 28 stipulates the time limits within which the Competition Commission must determine an appeal. All of these are taken from the date at which the notice of

the decision to grant the licence or the decision to modify the licence is published.

108. The standard time limit for determining an appeal is 24 weeks. This may be extended once by up to 8 weeks if the Competition Commission is satisfied that there is good reason to do so.

109. The Competition Commission may also extend the appeal period, by a period it considers appropriate, if there is an ongoing appeal to the Competition Appeal Tribunal, which the Competition Commission thinks may be relevant to its appeal.

110. *Subsection (9)* of clause 28 enables the Secretary of State, by negative statutory instrument, to modify the time periods in this clause.

111. Clause 29 provides the procedures that the Competition Commission must follow following its determination of an appeal, including procedures for publication of the order which contains the determination. The CAA must take the steps that it considers requisite for it to comply with the order.

Clause 30: Procedure on appeals

112. The Competition Commission must apply the CAA's general duty (subsections (1) and (2) of clause 1) to their determination of an application to appeal and the determination of the appeal. Furthermore, where the Competition Commission considers there are conflicts between the interests of different classes of user of air transport services or between the interests of users of air transport services in different matters in the general duty, the Competition Commission is to carry out its determinations in a manner which it considers furthers those interests as it thinks best (subsection (5) of clause 1).

113. The Competition Commission must also have regard to the same matters to which the CAA must have regard in carrying out its general duties (see subsections (3) and (4) of clause 1) in determining both the application for permission to appeal and the appeal itself.

114. This clause also provides that the Competition Commission must follow the procedures for the appeals set out in Schedule 2 rather than those set out in Part 2 of Schedule 7 to the Competition Act 1998.

Schedule 2: Appeals under sections 24 and 25

115. This Schedule applies to appeals to the Competition Commission in respect of conditions in new licences (or failure to include a condition) and in respect of the modification of licence conditions.

Part 1: Permission to Appeal

116. This Part of the Schedule provides the procedures applicable in seeking permission to appeal to the Competition Commission under clause 24 or clause 25.

Permission may be granted subject to conditions.

Part 2: Automatic suspension of condition of new licence or modification

117. This Part of the Schedule provides for the automatic suspension of relevant financial arrangements conditions when they are appealed under clause 24 (conditions of new licences) or clause 25 (modification of licence conditions). A “relevant financial arrangements condition” means one that is subject to an exception relating to financial arrangements pre-dating the coming into force of clause 4. The purpose of this provision is to preserve the current position where the removal or reduction of a derogation from such a condition is proposed. The underlying reason is that without such a provision an appeal may prove nugatory where it cuts across existing financial arrangements.

Part 3: Application for suspension of condition of new licence or modification

118. This Part of the Schedule provides the procedures for applications for a direction suspending a condition of a new licence coming into force under clause 16 (and for applications for a direction suspending modifications of licence conditions under clause 22. It also sets out the test which must be met before a direction may be given.

Part 4: Appeals

119. This Part of the Schedule provides the procedures applicable to the Competition Commission in hearing appeals under clause 24 (relating to conditions of new licences) and clause 25 (relating to modification of licence conditions). It also makes provision for the receipt of new evidence in certain circumstances.

Part 5: General

120. This Part of the Schedule sets out general procedures applicable to the Competition Commission in carrying out its functions under this Schedule and Chapter 1. It includes provisions requiring Competition Commission to make a costs order to recover its own costs and empowers it to make costs orders between the parties to an appeal (at paragraph 24). It provides that an appeal may only be withdrawn with the competition Commission’s consent (at paragraph 25). Paragraph 26 enables the Secretary of State, by negative statutory instrument, to modify the time periods in this Schedule.

Enforcement of licence conditions

Clause 31: Contravention notice

121. Clause 31 provides that the CAA may issue a contravention notice where it believes that a person has contravened or is contravening a licence condition. The contravention notice (and any subsequent withdrawal) must be published. It must specify the contravention, explain any action that the CAA may take and specify a representation period of not less than 30 days (which may be extended), except in cases of repeated contravention where a shorter period for representations may be

given.

Clause 32: Restrictions on giving contravention notices

122. Clause 32 provides that the CAA must not give a contravention notice in respect of a contravention where it has already given a contravention notice or an urgent enforcement order in respect of the same contravention except in specified circumstances such as contraventions of the same condition in different ways, or at different times.

Clause 33: Enforcement order

123. Clause 33 provides that the CAA may issue an enforcement order to a person if it has determined the person is contravening a condition set out in a contravention notice. It may also do so if it has determined that the person has contravened a condition set out in a contravention notice and, before the end of the representation period, has failed to take all the appropriate steps specified in the notice. An enforcement order must be published, specifying the condition and contravention, the appropriate steps to be taken and a reasonable period in which to take them, and the CAA's reasons for giving the order.

Clause 34: Enforcement order: modification and revocation

124. Clause 34 provides that the CAA may revoke or, with the agreement of the person to whom the order was given, modify an enforcement order provided that a notice in relation to the proposed revocation or modification has been published, a copy sent to the person to whom the order was given, and any representations made in the specified period have been considered. The notice must include reasons for the modification or revocation. A notice detailing the revocation or modification must be published as soon as practicable after the order has been given and a copy sent to appropriate industry representatives.

Clause 35: Urgent enforcement order

125. Clause 35 provides that an urgent enforcement order may be given where the CAA has reasonable grounds for believing that a person is contravening or has contravened or is likely to contravene a licence condition, that the contravention has resulted in or creates, or is likely to result in or create an immediate risk of a serious economic or operational problem for users or providers of air transport services, and that an order is appropriate to prevent, remove or reduce that problem or risk. Such an order must give the CAA's reasons, specify the steps to be taken and specify a reasonable period in which to take them.

Clause 36: Urgent enforcement order: confirmation

126. Clause 36 provides that the CAA must confirm or revoke an urgent enforcement order as soon as practicable after giving it. The CAA may only confirm an urgent enforcement order (with or without modifications) where it has determined that the contravention in fact has occurred or is occurring, or is likely to occur, that it has resulted in or creates or is likely to create an immediate risk of a serious economic or operational problem, and that the order is appropriate to prevent, remove or reduce

that problem or risk, or the likelihood of the problem arising. Before confirming an urgent enforcement order, the CAA must publish, and send to the person to whom it was given, a notice of the proposal to confirm, giving reasons, and allowing for any representations to be made. A notice with details of the confirmation must be published as soon as practicable after the confirmation of the order which may be given with or without modifications.

Clause 37: Urgent enforcement order: modification and revocation

127. Clause 37 provides that the CAA may revoke or, with the agreement of the person to whom the order was given, modify an urgent enforcement order, provided it has published a notice, given its reasons, and considered any representations. The CAA must publish a notice as soon as practicable after it is given, with details of the modification or revocation, and inform appropriate industry representatives of the modification or revocation. Clause 37 provides that the power under clause 36 to confirm an order with modifications (without the agreement of the person subject to it) is not restricted by the provisions of this clause.

Clause 38: Civil proceedings

128. Clause 38 provides that any person affected by a contravention of a requirement of an enforcement order or urgent enforcement order may bring civil proceedings against the person to whom such an order was given. It is a defence for the person to whom the order was given to show that all reasonable steps were taken and all due diligence exercised to avoid contravening the order's requirements. The CAA may enforce compliance in civil proceedings for an injunction or any other appropriate remedy or relief.

Clause 39: Penalty for contravention of licence condition

129. Clause 39 provides that a penalty may be imposed on a person given a contravention notice after the CAA has considered any representations made in the specified period and determined that the person is contravening or has contravened a licence condition specified in the notice. The CAA may impose a separate penalty for each contravention and for each period of the contravention, as relevant.

Clause 40: Penalty for contravention of order

130. Clause 40 provides that the CAA may impose a penalty where it has determined that a person is contravening or has contravened a requirement of an enforcement order or an urgent enforcement order that has been confirmed, whether or not the contravention is continuing.

Clause 41: Procedure before imposing penalty

131. Clause 41 sets out the procedure the CAA must follow before imposing a penalty in respect of a contravention notice or contravention of an enforcement order including notification, providing details of what the CAA has determined constitutes the contravention, and considering any representations made about the proposed penalty in the specified period of not less than 21 days. The notice must include the proposed amount of the penalty, which may be varied upon further notice, and include

the CAA's reasons for the variation. Any representations must be considered.

Clause 42: Procedure after imposing penalty

132. Clause 42 sets out the procedure after a penalty has been imposed in respect of a contravention notice or contravention of an enforcement order, including notification and publication. The notice must provide a reasonable period for payment of the penalty and, where the penalty is calculated entirely or partly by reference to a daily amount, it must specify the day on which daily amounts begin and the day on, or circumstances in which, they cease to accumulate.

Clause 43: Amount of penalty

133. Clause 43 provides that the amount of a penalty, which may be either or both of a fixed or daily amount, must be appropriate and proportionate to the contravention for which it is imposed. The CAA must have regard in particular to any representations made to it, as well as any steps taken by the person on whom the penalty is imposed towards complying with the licence condition or requirement specified in the notice, or remedying the consequences of the contravention. Calculation of a fixed amount must not exceed 10% of a person's qualifying turnover for the qualifying period, as reported in regulatory accounts, unless calculation of qualifying turnover is otherwise provided by regulations made by the Secretary of State.

Clause 44: Amount of penalty: daily amounts

134. Clause 44 provides that the daily penalty in relation to a contravention notice or enforcement order or confirmed urgent enforcement order is an amount payable where the contravention continues after the penalty is imposed. The daily amount, which must not exceed 0.1% of the person's qualifying turnover for the qualifying period, is payable in respect of each day in a specified period that the CAA considers appropriate must not exceed 0.1% of the person's qualifying turnover for the qualifying period.

Clause 45 and Schedule 3: Appeals against orders and penalties

135. Clause 45 gives effect to Schedule 3 which sets out the factors against which a person may appeal to the Competition Appeal Tribunal and the grounds on which an appeal may be made. Appeals may be made against a decision to give or confirm an enforcement order, the specified steps to be taken and the period allowed for taking those steps. Appeals may also be made against a decision to impose a penalty, the period allowed for payment, the amount of the penalty or, in the case of daily amounts, the period during which daily amounts accumulate. An appeal against an enforcement order, or an appeal against a penalty for contravention of a licence condition or order, may be made by the person to whom the order has been given or on whom the penalty has been imposed. Appeals against modification and revocation of enforcement orders may be made only by a person who is not the person to whom the order was given and who appears to the Competition Appeal Tribunal to have sufficient interest in the decision.

Revocation of licence

Clause 46: Revocation of licence

136. Clause 46 provides that the CAA may, by notice, revoke a licence in the circumstances specified in the licence. Before revoking a licence the CAA must notify the licence holder that it intends to revoke the licence, giving its reasons and allowing the licence holder to make representations. The CAA must allow a period of at least 30 days from notification before it gives notice revoking a licence unless a shorter period is agreed with the licence holder. The period may be extended once for up to 30 days. The CAA may withdraw a notice revoking a licence, giving its reasons for doing so. A notice detailing the revocation, extension or withdrawal must be published as soon as practicable after the notice has been given and a copy must be sent to appropriate industry representatives.

Clause 47 and Schedule 4: Appeals against revocation of licence

137. Clause 47 gives effect to Schedule 4 which provides for appeal against a decision to give a notice revoking a licence and a decision to give a further notice withdrawing a licence revocation notice (except where such a notice was given in accordance with a direction given by the Competition Appeal Tribunal). An appeal may also be made against a decision as to the day on which revocation takes effect. The making of an appeal suspends the effect of the notice and extends the period specified in the notice until the appeal is decided or withdrawn. A further appeal may be made against a point of law arising from a decision of the Competition Appeal Tribunal.

Obtaining information

Clause 48: Power to obtain information

138. Clause 48 provides that the CAA may, by notice, require a person to provide information or a document that it reasonably requires for the purposes of carrying out its functions under Chapter 1 of Part 1. The information or document required may only be that which a person can be compelled to produce as evidence in civil proceedings before a court.

Clause 49: Enforcement of information notice

139. Clause 49 provides that the CAA may impose a penalty that is appropriate and proportionate of a fixed amount up to £2,000,000 and/or a daily amount up to £100,000 (amounts which the Secretary of State may by regulations change), on a person who fails to comply with a notice to provide information or a document.

Clause 50: Penalty for providing false information, destroying documents etc

140. Clause 50 provides that the CAA may impose a penalty that it considers appropriate and proportionate on a person who knowingly or recklessly provides information that is false or misleading. A penalty may also be imposed if a document

that is required to be produced is intentionally altered, suppressed or destroyed. The clause specifies the circumstances in which the CAA may impose a penalty including where false or misleading information is provided in relation to a licence condition or where a person provides false or misleading information knowing that the information is likely to be used by the CAA for the purpose of carrying out its functions under Chapter 1 of Part 1.

Clause 51: Procedure before imposing penalty

141. Clause 51 provides that before imposing a penalty in respect of an information notice or provision of false information, destroying documents etc, the CAA must give notice about the proposed penalty, including the proposed amount. Such notice must be published and the appropriate industry representatives informed. The CAA must allow for a representation period of not less than 21 days. Before making any variation to the proposed amount or day on which daily amounts begin or cease to accumulate, or circumstances in which they cease to accumulate, the CAA must give notice, publish the notice, send a copy of the notice to relevant air transport representatives and consider any representations made.

Clause 52: Procedure after imposing penalty

142. Clause 52 provides that the CAA must give notice as soon as practicable after imposing a penalty under clause 50. The notice must be published and state the amount of penalty, give the CAA's reasons and specify a reasonable period within which the penalty must be paid.

Clause 53 and Schedule 5: Appeals against penalties

143. Clause 53 gives effect to Schedule 5 which sets out the basis on which a person may appeal to the Competition Appeal Tribunal against a penalty (but not a notice) for failure to provide information including the amount of penalty and the period allowed for payment. The Schedule provides the grounds for appeal, and makes provision about decisions on appeal. A further appeal may be made on a point of law arising from a decision of the Competition Appeal Tribunal.

Penalties

Clause 54: Imposing penalties

144. Clause 54 provides that the CAA may not impose a penalty in respect of an act or omission for which a penalty has already been given, with regard to the contravention of a licence condition or of an order or of an information notice, unless the acts or omissions took place at different times or at different periods.

Clause 55: Recovering penalties

145. Clause 55 provides for the consequences of unpaid penalties including recovery of unpaid balances and interest payable to the CAA, which must be paid into the Consolidated Fund.

Clause 56: Statement of policy on penalties

146. Clause 56 provides that the CAA must prepare and publish a statement (including any revised statement) of its policy on penalties. The CAA must consult when preparing or revising a policy statement. Clause 56 also provides that the CAA must, when imposing a penalty or determining the amount of a penalty, take into consideration the statement published before the contravention in respect of which the penalty is to be imposed.

Disclosing information

Clause 57 and Schedule 6: Disclosing information

147. Clause 57 provides for the protection from disclosure by the CAA of commercial information and information relating to the private affairs of an individual where such disclosure would cause significant harm. It gives effect to Schedule 6 which sets out the circumstances in which information relating to the private affairs of an individual or to a particular business may and may not be disclosed and establishes that it is a criminal offence to disclose information where such disclosure is not permitted.

CHAPTER 2 – COMPETITION

Clause 58: Functions under Part 4 of Enterprise Act 2002 and Clause 59: Enterprise Act 2002: Supplementary

148. These clauses provide for most of the functions of the OFT under Part 4 of the Enterprise Act 2002 (market investigations) to be held concurrently by the CAA, so far as those functions relate to the provision of airport operation services.

149. Part 4 of the Enterprise Act 2002 allows for the OFT to make a market investigation reference to the Competition Commission (the “CC”). These investigations are designed to complement the Competition Act 1998 by providing a means of addressing problems in markets where competition does not appear to be working well, but where there is no apparent breach of existing competition law. An example of the sort of circumstances in which a market investigation might take place would be a situation where a few large firms supplied almost the whole of the market and, without there being any agreement between them or any concerted practice such as would infringe the Competition Act 1998, they all tended to follow parallel courses of conduct, while new competitors faced significant barriers to entry into the market, and there was little or no evidence of vigorous competition between the existing players (i.e. a non-collusive, uncompetitive oligopoly).

150. The OFT is able to make a reference to the CC where it has reasonable grounds to suspect that any “feature”, or combination of features, of a market operating in whole or in part in the UK prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK. Relevant

market features are the structure of a market for goods or services, the conduct of persons supplying or acquiring goods or services in that market, and the conduct of their customers. Where the CC finds that such an adverse effect on competition exists, it is under a duty to take such remedial action within its powers as it considers reasonable and practicable.

151. Clause 58 enables the CAA to exercise the OFT's functions under Part 4 of the Enterprise Act 2002 in relation to airport operation services, except that, unlike the OFT, the CAA is neither obliged to keep a register of undertakings accepted and orders made (since this is the OFT's exclusive responsibility under section 166 of the Enterprise Act 2002) nor is it obliged to issue guidance on the making of market references (under section 171 of that Act).

152. *Subsections (1) and (2)* of clause 59 are designed to prevent the exercise by both the CAA and the OFT of their concurrent powers under Part 4 of the Enterprise Act 2002 in relation to the same matter. These subsections place those bodies under a duty to consult each other before exercising any of their concurrent functions and prohibit them from exercising these functions in a case where the other has already done so.

153. *Subsection (4)* of clause 59 places the CAA under a duty, where it has referred a matter to the CC under the provisions of Part 4 of the Enterprise Act 2002, to provide the CC with any information relevant to the investigation in the CAA's possession or control which is requested by the CC or which the CAA considers appropriate. *Subsection (6)* places a duty on the CC to take this information into account.

154. *Subsection (5)* of clause 59 places the CAA under a duty to provide any other assistance requested by the CC for the purpose of such a reference and which is in the CAA's power to give.

155. *Subsection (7)* of clause 59 gives the Secretary of State the power to determine any question that arises as to whether the CAA must or may carry out any relevant function under the Enterprise Act 2002. However, *subsection (8)* also makes clear that no action taken by the CAA under Part 4 of the Enterprise Act 2002 is open to challenge on the grounds that such action should have been taken by the OFT (other than in relation to sections 166 and 171).

156. *Subsection (9)* of clause 59 applies the CAA's general duties to the CAA in carrying out its concurrent functions under Part 4 of the Enterprise Act 2002. The CAA's general duties are set out in clause 1.

Clause 60: Functions under Competition Act 1998 and Clause 61: Competition Act 1998: Supplementary

157. These clauses provide for most of the functions of the OFT under Part 1 of the Competition Act 1998 (competition) to be held concurrently by the CAA, so far as

they relate to airport operation services and to the things listed in *subsection (3)* of clause 60. These things are restrictive agreements, concerted practices or decisions of associations of undertakings and abuse of a dominant position as prohibited by the Competition Act 1998 and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union of 30 March 2010 (the “TFEU”). This means that the CAA is able to exercise almost all of the functions of the OFT under Part 1 of the Competition Act 1998 in so far as they relate to activities connected with the provision of airport operation services.

158. The functions under Part 1 of the Competition Act 1998 which the CAA is not able to exercise are functions under:

- section 31D, which requires the OFT to prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments from such person (or persons) concerned as it considers appropriate when the OFT has begun an investigation.
- section 38, which requires the OFT to prepare and publish guidance as to the appropriate amount of any penalty under Part 1 of that Act.
- section 51, which allows the OFT to make rules (currently in the form of the Competition Act 1998 (Office of Fair Trading's Rules) Order 2004 (SI 2004/2751)) setting out the procedures to be followed by the OFT, the sectoral regulators and third parties under Part 1 of that Act.

159. The Competition Act 1998 contains statutory prohibitions on anti-competitive behaviour applicable in the UK which are modelled on Articles 101 and 102 of the TFEU. It contains two prohibitions: first, it prohibits agreements which prevent, restrict or distort competition and which may affect trade within the United Kingdom (‘the Chapter I prohibition’); secondly, it prohibits conduct which amounts to an abuse of a dominant position in a market which may affect trade within the United Kingdom (‘the Chapter II prohibition’). The 1998 Act confers on the OFT powers to investigate and enforce against infringements of both the Chapter I and Chapter II prohibitions and the prohibitions set out in Articles 101 and 102 TFEU.

160. Examples of the functions in respect of which the CAA has concurrent jurisdiction include:

- to investigate possible infringements of the Chapters I or II or Article 101/102 prohibitions, either on their own initiative or in response to complaints;
- to impose financial penalties and/or to give directions to bring an infringement of any of the prohibitions to an end; and
- to issue general advice and information on how the Competition Act 1998

applies to the airport operation services sector.

161. Further provision for the co-ordination of the performance by the OFT and sectoral regulators of concurrent functions under the 1998 Act is contained in the Competition Act 1998 (Concurrency) Regulations 2004 (SI 2004/1077).

162. The OFT and each regulator are also represented on the Concurrency Working Party which was formed in 1997 to ensure full co-ordination between regulators and the OFT and to ensure consistency of approach to casework.

163. The CAA and the OFT would be expected to consult each other before a decision is made as to who will deal with a case in respect of which there is concurrent jurisdiction. In general, anti-competitive agreements or abusive conduct that relate to airport operation services will be dealt with by the CAA (unless the OFT is better placed to do so).

164. *Subsection (1)* of clause 61 gives the Secretary of State the power to determine any question that arises as to whether the CAA must or may carry out any relevant function under Competition Act 1998. However, *subsection (2)* also makes clear that no action taken by the CAA under Part 1 of the Competition Act 1998 is open to challenge on the grounds that such action should have been taken by the OFT.

165. *Subsection (3)* of clause 61 enables the CAA, when carrying out relevant functions under the Competition Act 1998, to have regard to matters mentioned in subsections (1) to (3) of the CAA's general duty, as set out in clause 1. *Subsection (4)* disapplies the CAA's general objectives in section 4 of the Civil Aviation Act 1982 when carrying out relevant functions under the Competition Act 1998.

Clause 62: Review etc of airport operation services

166. This clause contains provisions designed to ensure that the markets relevant to airport operation services are kept under review by the CAA, and that the CAA has appropriate mechanisms to provide advice and assistance to the OFT, the Secretary of State and the wider public.

167. *Subsection (1)* places a qualified duty on the CAA to keep the provision of airport operation services in the UK under review and also to collect information about such provision to facilitate the CAA in carrying out its concurrent competition functions set out in this Chapter.

168. *Subsection (2)* places a duty on the CAA to provide information, advice and assistance to the Secretary of State and the OFT about any matter relating to its concurrent competition functions if it is requested to do so or thinks it is expedient to do so. *Subsection (3)* provides a power for the CAA to recover its expenses where the Secretary of State or the OFT has requested the information, advice or assistance.

169. *Subsection (4)* provides a power for the CAA to prepare and publish reports

relating to airport operations services, which is intended to enable the CAA to publish market studies where it considers it appropriate. *Subsection (5)* gives the CAA a discretion to exclude commercial information or information relating to private affairs from the published document in certain circumstances.

170. *Subsection (6)* enables the CAA to carry out, commission or provide financial or other support for research under its functions for this clause.

Clause 63: Power to modify CAA’s competition powers

171. The CAA only has concurrent functions in relation to “airport operation services”, which are defined in clause 66. Clause 63 enables the Secretary of State, by affirmative statutory instrument, to modify the scope of the CAA’s concurrent powers; specifically, to narrow the scope by excluding certain types of airport operation services or to expand the scope by including services that are not airport operation services. The definition of airport operation services is also subject to changes in scope by affirmative statutory instrument, whereby an instrument has been laid before, and approved by a resolution of, each House of Parliament. The provisions also allow for consequential amendments to be made.

172. The power in this clause allows for the coverage of economic regulation and concurrent competition powers to diverge.

CHAPTER 3 – GENERAL PROVISION

Interpretation

Clause 64: Airports and Clause 65: Airports: Supplementary

173. These clauses define what an airport is for the purposes of this Part of the Bill.

174. Clause 64(1) states that an airport comprises an aerodrome (as defined in the Civil Aviation Act 1982) as well as other land and structures used for the purposes described in paragraphs (a) to (f).

175. The Civil Aviation Act 1982 defines an aerodrome as “any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically”.

176. Clause 65 provides further clarification on what is and is not included in the definition of an airport. For example it states that a passenger (who has not arrived by air) arrives at the airport when they first arrive at one of the following:

- The terminal building;
- The terminal forecourt; or
- A car park with pedestrian access to the terminal.

Clause 66: Airport operation services

177. The CAA's primary duty (clause 1(1)), which governs all its functions under this Chapter) is to further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of *airport operation services*.

178. *Subsection (1)* defines what services provided at an airport (as defined in clauses 64 and 65) comprise "airport operation services". Clauses 66(2) and (3) provide further clarification on what services are and are not included in the definition.

179. For the purposes of this Part of the Bill *subsection (4)* clarifies that "airport operation services" include permitting a person to access or use land. Clause 70 (2) further clarifies that any reference to providing a service includes providing a facility. As a result the provision of space to retailers in the terminal building would be caught by the definition of airport operation services; however due to clause 66(3) (c) the provision of retail services (for example duty free sales) would not.

Clause 67: Air transport services

180. The CAA's primary duty (clause 1(1)), which governs all its functions under this Chapter) is to further the interests of users of *air transport services* regarding the range, availability, continuity, cost and quality of airport operation services.

181. This clause defines "air transport service" and "users" of such services. Users comprise: current and future passengers of both commercial and private flights; and those with property rights in cargo which is transported by air.

182. The definition of users of air transport services does not include airlines, pilots or other members of crew.

183. Flights to or from airports in the United Kingdom are covered by the definition.

Clause 69: Connected persons

184. Clauses 4, 23, 17 and 43 refer to the concept of "connected persons". Clause 69 defines this concept for the purpose of this Part of the Bill. Connected persons are defined by reference to the Companies Act 2006 using the definition of "group undertaking" set out in section 1161(5) of that Act in order to cover any arrangements an operator may have within a company group. *Subsection (2)* enables the Secretary of State to modify the "connected persons" definition.

PART 2 – OTHER AVIATION MATTERS

Aviation security

Clause 76: Functions of CAA relating to aviation security

185. This clause amends Part 2 of the Aviation Security Act 1982 (the “ASA 1982”) by inserting a number of new sections which confer various aviation security functions on the CAA.

186. *Subsection (2)* inserts new section 14A (review by the CAA). The new section places a duty on the CAA to review aviation security directions that are currently in force and to make recommendations to the Secretary of State about those directions. The Secretary of State may specify the form of the recommendations. Aviation security directions will continue to be made by the Secretary of State. The CAA’s role will be, for example, to prepare draft directions for the Secretary of State to make and to prepare guidance on directions.

187. *Subsection (3)* inserts new section 16A (directions requiring national security vetting). Aviation security directions specify certain aviation security activities that can only be carried out by individuals who have been vetted. This new section places a duty on the CAA to make arrangements for carrying out that vetting, including arrangements for renewing and withdrawing clearance and arrangements for appeals. This new section enables the Secretary of State to give directions to the CAA in connection with the vetting arrangements, which the CAA must comply with. *Subsection (5)* of new section 16A confirms that the new vetting does not remove or limit the prerogative power under which national security vetting is currently exercised.

188. Section 20A of the ASA 1982 is a regulation-making power that enables the Secretary of State to make regulations about approved providers of aviation security services. *Subsection (4)* of clause 76 amends *subsection (2)* of section 20A of the ASA 1982 so as to enable the regulations made under this section to provide for the CAA, rather than the Secretary of State, to maintain a list of persons who are approved by it for the provision of a particular aviation security service.

189. *Subsection (5)* of clause 76 inserts new section 21H. This new section places a duty on the CAA to provide advice and assistance to the persons listed in *subsection (3)* of new section 21H (for example, managers of UK aerodromes and operators of aircraft registered or operating in the UK) as the CAA considers appropriate having regard to the purposes to which Part 2 of the ASA 1982 applies, which is the protection of civil aviation against acts of violence. *Subsection (4)* of new section 21H is a saving provision which ensures that the Secretary of State retains the power to provide advice and assistance to the persons listed in *subsection (3)* of the new

section, having regard to the purposes to which Part 2 of the ASA 1982 applies and any advice and assistance provided to those persons by the CAA.

190. *Subsection (6)* of clause 76 amends the definition of an “authorised person” in section 24A (interpretation of Part 2) of the ASA 1982 so that it can mean a person authorised in writing by the Secretary of State or the CAA. “Authorised persons” have the power to inspect aircraft and aerodromes and other connected powers as set out in Part 2 of the ASA 1982. The provision set out in subsection (6) of clause 76 will mean that such persons will be able to be appointed by the CAA, as well as the Secretary of State.

191. *Subsection (7)* of clause 76 inserts new section 24B (functions of CAA under this Part). *Subsection (1)* of this new section places a duty on the CAA to carry out the functions conferred on it by or under Part 2 of the ASA 1982 with a view to achieving the purposes to which Part 2 of the ASA 1982 applies. The purposes to which Part 2 of the ASA 1982 applies (the protection of civil aviation against acts of violence) are set out in section 10 of the ASA 1982. *Subsection (2)* of this new section requires the CAA to consult the Secretary of State if it considers there to be a conflict between its duty under subsection (1) of this new section and its duties under section 4 of the Civil Aviation Act 1982, which, amongst other things, include securing a high standard of safety. The CAA must resolve the conflict in the manner directed by the Secretary of State and, in so doing, is to be treated as being in compliance with subsection (1) of this new section and section 4 of the Civil Aviation Act 1982.

Clause 77: Power to modify functions of CAA etc relating to aviation security

192. This clause inserts a new section 21I in ASA 1982 (power to modify functions of CAA etc relating to aviation security) that enables the Secretary of State to modify, by regulations, the aviation security functions of the CAA and the functions of authorised persons that are authorised by the CAA. This clause provides that before making any such regulations, the Secretary of State must consult the CAA.

Clause 78 and Schedule 8: Minor and consequential amendments

193. This clause introduces Schedule 8 which includes minor and consequential amendments relating to aviation security.

194. It makes two amendments to the Civil Aviation Act 1982.

195. Paragraph 2 amends section 11 of the Civil Aviation Act 1982 (charges) by inserting a new *subsection (8)* which provides that references in section 11 to functions of the CAA include functions conferred by or under Part 2 of the ASA 1982 on authorised persons (as defined in that Part) authorised by the CAA. This enables the CAA to charge for the costs of authorised persons authorised by the CAA.

196. Paragraph 3 amends section 20 of the Civil Aviation Act 1982 (supplementary provisions with respect to the functions of CAA) by inserting a new *subsection (5)* which provides that references in section 20 to functions of the CAA include

functions conferred by or under Part 2 of the ASA 1982 on authorised persons (as defined in that Part) to the extent that the functions are carried out by persons authorised by the CAA. This enables the CAA to have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of the functions of authorised persons authorised by the CAA.

197. The Schedule makes a number of minor and consequential amendments to the ASA 1982.

Clause 79: Transfer schemes

198. This clause enables the Secretary of State to make schemes to transfer to the CAA rights, powers, duties, liabilities of the Crown in connection with individuals employed in the civil service of the Crown and other property, rights and liabilities of the Crown.

199. It provides that a scheme may transfer only such property, rights, powers, duties and liabilities as the Secretary of State considers appropriate having regard to the functions conferred on the CAA by or under Part 2 of the ASA 1982, as amended by this Bill, and the functions of authorised persons authorised by the CAA.

200. This clause requires the Secretary of State to consult with the CAA before making a transfer scheme.

201. This clause introduces Schedule 9 which makes further provision about transfer schemes made under clause 79 in connection with the CAA's aviation security functions.

Paragraph 1: Transfer

202. Paragraph 1 provides that a transfer scheme may make provision for the transfer of property, rights and liabilities that would not otherwise be capable of transfer.

203. It also enables the creation of rights or imposition of liabilities over transferred property, the creation of new rights and liabilities as between the Crown and the CAA and the apportionment of property, rights and liabilities between the Crown and the CAA.

204. Sub-paragraph (3) allows a transfer scheme to include consequential, incidental, supplementary and transitional provision and savings.

Paragraphs 2 to 4: Employment

205. Paragraph 2 makes provision in relation to rights, powers, duties and liabilities relating to an individual's contract of employment where they are transferred by means of a transfer scheme. It provides that the continuity of the individual's employment is not broken by the transfer of employment under a transfer scheme. The contract of employment will continue as if it had been made between the

individual and the CAA, and the individual will not be regarded as having been dismissed by reason of redundancy because of the transfer.

206. Paragraph 3 sets out what happens if an individual objects to the transfer of their employment contract under a transfer scheme before it takes effect. The contract of employment will be terminated immediately before the point the transfer would have taken place but the employee is not to be considered to have been dismissed for any purpose. Sub-paragraph (5) preserves an individual's right to terminate their contract of employment where there is a substantial detrimental change in the individual's working conditions, other than the change of employer.

207. Paragraph 4 provides that a transfer scheme may include provision with respect to the individual's eligibility to become a member of a pension scheme by virtue of employment with the CAA. The transfer scheme may also include provision with respect to the rights of, or rights or liabilities in respect of, the individual under a pension scheme of which the individual may become a member by virtue of employment with the CAA, or a pension scheme of which the individual is a member by virtue of employment immediately before the transfer.

Paragraph 5: Civil servants treated as employed under a contract of employment etc.

208. This paragraph makes provision in relation to employment in the civil service of the Crown, for the purposes of this Schedule. Where an individual holds such employment, the individual is deemed to be employed under a contract of employment on the terms of employment in the civil service of the Crown.

Paragraph 6: Certificate

209. This paragraph confirms that a certificate issued by the Secretary of State that any property, rights, powers, duties or liabilities have been transferred to the CAA under a transfer scheme is to be taken as conclusive evidence of that fact. The certificate is evidence that a transfer has taken place.

Paragraph 7: Validity

210. This paragraph ensures that anything done by the Crown before the time of transfer is still valid after transfer.

Paragraph 8: Continuity

211. This paragraph ensures that things done by or in relation to the Crown with respect to anything transferred under a transfer scheme is to be treated as though it had been done by or in relation to the CAA or its members or employees, or continued by or in relation to the CAA or its members or employees. Sub-paragraph (2) provides that a transfer scheme may, in particular, make provision about the continuation of legal proceedings, and make provision for references to the Crown in documents to be treated as references to the CAA.

Provision of information about aviation services

Clause 80: Information for benefit of users of air transport services

212. The provisions of clause 80 are designed to assist users (passengers and freight service users) or potential users of aviation services and facilities to compare service standards and make a more informed choice. The clause imposes a duty on the CAA to publish, or arrange for the aviation industry to publish in a form that the CAA determines, such information and advice as the CAA considers appropriate to assist users to compare aviation services and facilities. The duty does not apply to information which the CAA could refuse to disclose in response to a request made under the Freedom of Information Act 2000. The CAA may also publish guidance and advice for the aviation industry to improve service standards. The CAA must where practicable keep under review the information, guidance and advice that are published under this clause. The CAA may conduct or commission research in support of these functions.

Clause 81: Environmental information

213. The provisions of clause 81 are designed to raise awareness of the environmental effects in the UK of civil aviation, their impact on human health and safety, and measures taken to limit the adverse environmental effects. Environmental effects are wide-ranging and include, for example, noise, vibration, emissions and visual disturbance from aircraft as well as the effects from services and facilities provided at civil airports. The clause imposes a duty on the CAA to publish, or arrange for the aviation industry to publish in a form that the CAA determines, such environmental information and advice as the CAA considers appropriate. The duty does not apply to information which the CAA could refuse to disclose in response to a request made under the Freedom of Information Act 2000. The CAA may also publish guidance and advice with a view to limiting the adverse environmental impacts of the aviation sector. The CAA must where practicable keep under review the information, guidance and advice published under this clause. The CAA may conduct or commission research in support of these functions.

Clause 82: Power to obtain information

214. Clause 82 provides that the CAA may by notice in writing require a person to provide information that the CAA reasonably requires to exercise its functions under clause 80 and 81. As a result of *subsection (5)*, information obtained using this power which relates to the affairs of an individual or to a particular business must not be disclosed unless this is permitted under Schedule 6.

Clause 83: Enforcement of information notice

215. Clause 83 provides that when a person fails without reasonable excuse to comply with a notice issued under clause 82, the CAA may impose a penalty, or enforce the duty to comply in civil proceedings for an injunction, or both. The amount of the penalty as determined by the CAA must be appropriate and proportionate to the offence and may be either a fixed amount of up to £50,000 or a daily amount of up to

£5,000 (or both). The Secretary of State may vary the maximum fixed and daily amounts by a statutory instrument which must be approved in each House of Parliament.

Clause 84: Penalty for providing false information, destroying documents etc

216. Clause 84 provides that the CAA may impose a penalty if a person deliberately or recklessly provides false or misleading information in response to a notice under clause 82 or knowing that the CAA is likely to use the information to carry out its functions under clause 80 or 81. The CAA may also impose a penalty when a person intentionally alters or destroys information required by a notice under clause 83. The amount of a penalty imposed under clause 84 must be appropriate and proportionate.

Clause 85: Procedure before imposing penalty

217. Clause 85 provides the procedure which the CAA must follow before imposing a penalty under clause 83 or 84. The CAA must give the person a notice including the proposed amount of the penalty, reasons for imposing it and, in the case of a daily penalty, when it would begin and when, or in what circumstances, it would cease to accumulate. The CAA must consider any representations made about the proposed penalty within the period specified in the notice (which must be at least 21 days beginning with the day on which the notice was given). The same process applies before the CAA can vary the proposed amount of the penalty or the day on which daily amounts would begin to accumulate or the day on which, or circumstances in which, they would cease to accumulate. The clause also provides that the CAA may, by notice, withdraw a penalty. The CAA must publish any notice under clause 85 as soon as practicable.

Clause 86: Procedure after imposing penalty

218. Clause 86 provides the procedure which the CAA must follow after imposing a penalty including giving notice to the person on whom the penalty is imposed and publishing the notice.

Clause 87 and Schedule 10: Appeals

219. Clause 87 and Schedule 10 provide the grounds on which a person may appeal to the Competition Appeal Tribunal against a penalty imposed under clause 83 and 84. A person may appeal against the imposition of the penalty or its amount, duration or payment period. The Competition Appeal Tribunal may confirm or set aside a penalty or give such directions as it considers appropriate to the CAA. A further appeal to the courts may be made on a point of law arising from the decision of the Competition Appeal Tribunal with the permission of the appropriate court or the Competition Appeal Tribunal.

Clause 88: Payment of penalties

220. Clause 88 provides for the calculation of interest on unpaid penalty balances and the recovery of unpaid penalties as a debt due to the CAA. Any penalties or debt

recovered by the CAA must be paid into the Consolidated Fund.

Clause 89: Statement of policy

221. Clause 89 provides that the CAA must prepare and publish a statement of its policy on: the exercise of its functions under clause 80 and 81; and imposing penalties under clause 83 and 84, or determining the amount of such penalties. When preparing or revising this policy the CAA must have regard to the principle that the benefits of carrying out its functions under clause 80 and 81 should outweigh any adverse effects. When imposing a penalty under clause 83 or 84, or determining its amount, the CAA must have regard to the last statement of policy published before the act or omission in respect of which the penalty is to be imposed. The CAA must consult those persons it considers appropriate on the preparation or revision of its statement of policy. It must also publish any revisions to its statement of policy.

Further provision about CAA

Clause 91: CAA membership

222. Clause 91 amends section 2 of, and Schedule 1 to, the Civil Aviation Act 1982 so that the Secretary of State is responsible for the appointment of the chair and the other non-executive members, and the non-executive members are responsible for the appointment of the chief executive with the approval of the Secretary of State. The chief executive is to appoint the other executive members with the approval of the chair and at least one other non-executive member. This clause further provides that the CAA is to consist of between seven and sixteen members, and that non-executive members should exceed executive members in number.

Clause 92: Non-executive members of CAA

223. Clause 92 amends Schedule 1 to the Civil Aviation Act 1982 to reflect the fact that the Secretary of State is only responsible for the appointment or removal of non-executive members. It updates the circumstances in which the Secretary of State may remove a non-executive member from office. It removes the requirement for HM Treasury's consent to levels of remuneration for members. It also ensures that non-executive members are not entitled to the payment of a CAA pension as they are not employees of the CAA.

Clause 93: Executive members of CAA

224. This clause inserts provisions into Schedule 1 to the Civil Aviation Act 1982 on the terms and conditions of employment of executive members, which are to be determined:

- (i) in the case of the chief executive, by the non-executive members; and
- (ii) in the case of the executive members, by the chief

executive with the approval of the chair and at least one other non-executive member.

225. It also distinguishes executive members from other employees of the CAA where necessary in the Act.

Clause 94: CAA's air navigation functions

226. Clause 94 amends section 66 of the Transport Act 2000 so as to replace the Secretary of State's power to nominate a member to perform certain of the CAA's air navigation functions with a duty for the chief executive to consult the Secretary of State before nominating, with the approval of the chair and at least one other non-executive member, another executive member to perform such of the CAA's air navigation functions as the Secretary of State may specify. It also amends section 67 to ensure that the Secretary of State may only nominate a non-executive member to perform the national security functions in section 67.

Clause 95: CAA charges

227. Clause 95 amends section 11 of the Civil Aviation Act 1982, which currently requires new charging schemes to be published 60 days before coming into force. The amended section 11 requires the CAA to consult first those affected by the charging scheme and then the Secretary of State. New charging schemes come into force 14 days after publication.

228. Section 11(3) provides that the Secretary of State may make regulations to override any charging scheme made by the CAA. Clause 95 adds new *subsections (3A) and (3B)*. These subsections require that the Secretary of State consults prior to making regulations, unless such consultation is thought unnecessary by the Secretary of State in view of the consultation carried out by the CAA.

229. The clause also amends sections 16 and 17 of the Civil Aviation Act 1982 so as to provide that the CAA cannot recover from the Secretary of State any expense it incurs in providing assistance or advice under section 16 or in providing information under section 17 in connection with any exercise of the Secretary of State's power to make regulations under section 11(3). This is because the Secretary of State would only need to use that power in the unlikely event that there were to be disagreement between the Secretary of State and the CAA on the appropriateness of the charging scheme.

Clause 96: Civil sanctions

230. Clause 96 amends Part 3 (civil sanctions) of the Regulatory Enforcement and Sanctions Act 2008 to add the CAA to the list of designated regulators in Schedule 5 to that Act. This enables an order to be made so as to give the CAA access to a range of civil sanctions provided for by Part 3 of the 2008 Act, which could be used in relation to the enforcement of breaches of civil aviation law. These sanctions would sit alongside the existing sanctions available to the CAA and would provide it with an alternative to relying on criminal prosecutions. Clause 96 also adds particular

provisions of the Civil Aviation Act 1982 to the list of enactments in Schedule 7 to the 2008 Act. This has the effect of extending an existing power to create criminal offences by subordinate legislation, so as to include the power to confer on the CAA the civil sanctions provided for by Part 3 of the Act.

Clause 97: Criminal proceedings

231. Clause 97 amends section 20 of the Civil Aviation Act 1982 (supplementary provisions with respect to the functions of CAA) to make explicit that the power conferred on the CAA to do anything which facilitates, or is conducive or incidental to, the performance of any of its functions includes the power to institute and carry on criminal proceedings in England and Wales or Northern Ireland. The power to do anything which facilitates, or is conducive or incidental to, the performance of the CAA's functions applies in respect of Scotland but criminal proceedings there are instituted and carried out by Procurators Fiscal.

Miscellaneous

Clause 98: Dangerous flying

232. Clause 98 repeals section 81 of the Civil Aviation Act 1982 which makes dangerous flying of an aircraft an offence. It also has the effect of removing references to the offence elsewhere in that Act. The repeal is made as prosecutions for endangerment are brought by the CAA under the Air Navigation Order 2009 and not under section 81 of the Civil Aviation Act.

Clause 99: Offences under Civil Aviation Act 1982

233. Clause 99 contains amendments to section 99 of the Civil Aviation Act 1982. *Subsection (2)* adds to section 99(4) a reference to an offence under an Air Navigation Order, so that such an offence is covered by the provision made by section 99(1) and (2) (which relates to cases where an offence is committed by a body corporate). *Subsection (3)* provides for the repeal of references in section 99(5) of the Civil Aviation Act 1982 to sections 62 and 63 of that Act, which were repealed by the Transport Act 2000.

PART 3 – FINAL PROVISIONS

Clause 100: Commencement

234. Clause 100 provides for commencement of the Bill's provisions. Most of the provisions of the Bill will come into force on a day appointed by order of the Secretary of State.

235. Clauses 80 to 90 and Schedule 10, clauses 91 to 94 and clauses 97 to 99 come into force at the end of the period of two months beginning with the day Royal Assent

is given. Part 3 comes into force on Royal Assent.

Clause 101: Extent

236. This Bill extends to the United Kingdom as a whole.

Clause 102: Channel Islands, Isle of Man and British overseas territories

237. *Subsection (1)* provides that the powers in section 108(1) of the Civil Aviation Act 1982 (power to extend to Channel Islands, Isle of Man and British Overseas Territories) apply to the amendments of section 11 of that Act made by this Bill.

238. *Subsection (2)* provides that the powers in section 39(3) of the Aviation Security Act 1982 (extension outside the UK) apply to the amendments of that Act made by this Bill.

Clause 103: Short title

239. This clause provides that the short title of the Act will be the “Civil Aviation Act 2011”.

FINANCIAL EFFECTS

240. The financial effects of this Bill are discussed in the Impact Assessments.

PUBLIC SECTOR MANPOWER

241. The public sector manpower effects of this Bill are discussed in the Impact Assessments.

SUMMARY OF THE IMPACT ASSESSMENT

242. The overall package of measures contained in the draft Bill, detailed in the overarching impact assessment, and outlined below, represent a net benefit of approximately £150m (present value terms over 20 years for the economic regulation of airports, and 10 years for all other policies). The overall costs per annum are estimated at close to £9m and the benefits at £10m.

243. For the proposals to reform the framework for the economic regulation of airports, the impact assessment estimates that these reforms will deliver net benefits of around £160m (present value terms over 20 years). The proposals are estimated to deliver benefits of £13.7m per annum with costs of £2.4m per annum.

244. For the proposals to transfer certain security functions from the DfT to the CAA the cost to the CAA is estimated at £4.8m per annum. The benefit (from a reduction in public expenditure) is estimated at £4.3m per annum. Taking into account

the non-monetised benefits resulting from the removal of distortions and the synergies from having a single aviation regulator looking after security, safety and economic regulation, the overall total benefits (monetised plus non monetised) is expected to exceed the total costs.

245. For the proposals to reform the legislative framework of the CAA, the costs for the information publication powers proposal are estimated to be £0.7m per annum. The benefits are unquantifiable but are expected to exceed the costs.

246. For the remainder of the reforms to the CAA's legislative framework, the impact assessment estimates that these reforms will deliver a small net cost of £0.002m (present value terms over 10 years). The total benefits (monetised and non-monetised) over the ten year appraisal period are expected to far outweigh these small monetised costs. The monetised costs and benefits are both expected to amount to around £1m per annum.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

247. The Bill is compatible with the European Convention on Human Rights (ECHR) and the Minister will be able to sign a section 19 statement to that effect. While a number of provisions may engage rights (in particular, Article 1 of Protocol 1 ("A1P1") (right to property), Article 6 (right to a fair trial) and Article 8 (right to respect for family and private life)), any such interference is justified and proportionate.

Part 1 - Regulation of Dominant Airports

Dominance determinations and licensing

248. The prohibition and determination of dominance of an airport or area within the airport may engage A1P1 and Article 6.

249. Where A1P1 is engaged such interference would be in the public interest and prescribed by law. The aim of these provisions is to protect users of air transport services against market abuses or the risk of market abuses by dominant airport operators where competition law is insufficient. In addition to the wider powers available to the CAA to ensure any level of regulatory oversight is proportionate, the market power test expressly requires the regulator to ensure that the benefits of regulation are likely to outweigh the adverse effects.

250. Although a determination under the market power test may also engage Article 6, the Government considers the procedures provided for by the draft Bill are

compliant.

251. An operator of a dominant area at a ‘dominant airport’ must not levy a ‘relevant charge’ unless it has a licence issued by the CAA. The draft Bill therefore makes provision to enable the operator to recover any charges for services provided prior to a final determination. It is unlikely that this engages Article 6 but, even if it does, any such interference would be in accordance with the law and there are strong public interest reasons (such as avoiding the closure of major UK airports) for the interference.

252. The CAA will have a wide discretion to impose (or subsequently modify) licence conditions on a dominant airport or area including price controls on the operator and be able to revoke a licence and thus Article 6 and A1P1 are engaged.

253. However, the holder of the licence or any provider of air transport services (e.g. an airline) whose interests are materially affected can appeal to the Competition Commission (CC). The Government considers that the use of the CC and its procedures as an appeal mechanism to be compliant with Article 6.

254. The imposition of licence conditions by CAA could affect the purchase, use, disposal and control of property at an airport and therefore the power potentially engages A1P1. The Government considers that such interference would be in the public interest.

255. There is an additional requirement and safeguard in restricting the power of the CAA to modify licence conditions relating to certain financial arrangements set out in clause 23.

256. The Government considers that this mechanism provides a further safeguard for any A1P1 rights because it is a targeted approach with an inbuilt proportionality test having regard to the operator’s interests and the public interest. Therefore any interference is justified and proportionate.

Enforcement of licence conditions

257. These provisions create a mechanism by which the CAA is enabled to deal with non-compliance of licence conditions, including the issuing of an enforcement order, the imposition of financial penalties and, ultimately, the revocation of a licence. A1P1 and Article 6 are engaged.

258. The Government considers that any interference with property rights is justified and proportionate in that the provisions strike a fair balance between the commercial interests of the licence holder and the need for competitive markets and appropriate consumer protection.

259. The Government is of the view that the new powers will not only ensure the CAA can take proportionate and dissuasive action to address failures to comply with regulatory requirements but that the procedural requirements to be followed in relation to enforcement action and penalties ensures that the subject of an order or penalty has access to a tribunal which offers an appropriate scope of review of the decision for the purposes of compliance with Article 6.

Revocation of licence

260. A decision to revoke a licence will be a determination of a civil right within the meaning of Article 6(1), insofar as it encompasses the ability to engage in commercial activity. However, the Government is of the view that the Bill provides sufficient safeguards including access to an appeal to the CC to guarantee fairness to satisfy Article 6.

Obtaining information and Disclosure of Information

261. The CAA may require information only if it reasonably requires such information for carrying out its functions (see clause 48(2)). The provision includes safeguards (see clause 57) and, in addition, the CAA will be obliged to act in a manner compatible with Convention rights and will be bound by the Data Protection Act 1998.

262. With regard to provision of information about aviation services, clause 80 requires the CAA to publish information for the purpose of assisting users of air transport services for the purpose of comparing relevant aviation services and facilities. Clause 81 relates to information for environmental purposes. The power to obtain information may only be exercised in respect of information that the CAA reasonably requires for the purpose of carrying out its functions under clauses 80 and 81.

263. It is therefore the Government's view that if these provisions do engage the rights protected under Article 8 it is justified and proportionate.

Chapter 2 - Competition

264. This Bill allows the CAA to exercise competition powers under Part 1 of the Competition Act 1998 (CA98) and Part 4 of the Enterprise Act 2002 (the 2002 Act) concurrently with the Office of Fair Trading (OFT), in so far as they relate to airport operation services as defined in clause 66. A number of regulators of regulated industries (including the CAA) already have concurrent powers with the OFT in respect of markets which fall within their responsibility. These provisions, which are intended to prevent and remedy anti-competitive behaviour, have the potential to

engage Article 6, Article 8 and A1P1.

265. The Government considers that the Competition Appeal Tribunal and the procedures provided for in the CA98 are compliant with both Article 6 and Article 8.

Part 2 - Other Aviation Matters

Functions of CAA relating to aviation security

266. Various aviation security functions are to be conferred on the CAA, including a duty to make arrangements for the vetting of those carrying out certain aviation security activities (as specified in directions). Article 8 and Article 6 may be engaged.

267. The Government considers that any interference is justified under Article 8(2) and is proportionate given the wider risks and more particularly that the level of security clearance required will be relevant to the nature of the security risk of the particular role.

268. Vetting arrangements may also engage Article 6. However the Government considers that an internal appeals procedure to be established by the CAA and access to other review and appeal mechanisms, such as on data protection and discrimination, mean the provisions are compliant with Article 6.