

CONSULTATION ON 1) DESIGNATION OF LONDON LUTON AIRPORT AS CO-ORDINATED FOR THE PURPOSES OF THE EC SLOT ALLOCATION REGULATION; AND 2) APPROVAL OF AIRPORT CO-ORDINATION LIMITED (ACL) AS CO-ORDINATOR AT THIS AIRPORT

Introduction

1. This consultation seeks your views on two issues:
 - I. Whether London Luton Airport should be designated as “Co-ordinated” by the Secretary of State for Transport for the purposes of the EC slot allocation Regulation 95/93 (as amended by EC Regulation 793/2004) and the associated UK slot allocation regulations (the UK regulations) and;
 - II. If so, whether you agree that the Secretary of State should approve the appointment of Airport Co-ordination Limited (ACL) as the designated co-ordinator for London Luton Airport.
2. Responses should be sent by **Wednesday 25 July 2012** to the Department for Transport at the address at the end of this consultation paper.

Background

3. The purpose of the EC Slot Regulation 95/93 (the Regulation) is to establish rules that help ensure the non-discriminatory, efficient and transparent allocation of slots and facilitation of schedule changes at busy EC airports, in order to help make the most efficient use of airport capacity.
4. As part of this, the Regulation effectively provides for three categories of airport slot co-ordination status, reflecting the degree of potential congestion at an airport and the intervention needed to help reduce congestion and delays. The categories are:
 - Co-ordinated – the most congested airports, where all slots must be allocated by an independent coordinator in accordance with the EC regulations. In the UK London Heathrow, Gatwick, Stansted, London City and Manchester are Co-ordinated airports.
 - Schedules facilitated – airports where there is potential for congestion at certain times and where an independent “schedules facilitator” has a formal role under the EC regulations to seek to ensure that airlines' planned air services can all be accommodated by voluntary agreements between airlines. Aberdeen, Birmingham, Bristol, Edinburgh, Glasgow, Luton (currently), Newcastle and Southampton are the eight airports currently designated as schedules facilitated in the UK.
 - Other – less busy airports where airlines' air service schedules can generally all be accommodated without difficulty.
5. Under the Regulation an airport has to be designated as “Co-ordinated” or

6. The airport categories in the EC Regulation are, by design, very similar to the three levels of airport in the IATA Worldwide Scheduling Guidelines (the IATA Guidelines). Level 3 in the IATA Guidelines corresponds to 'Co-ordinated', level 2 to 'Schedules facilitated' and level 1 to other airports. The IATA Guidelines also outline similar roles to the EC regulations for a co-ordinator at a Level 3 airport or a schedules facilitator at a Level 2 airport. The IATA Guidelines apply to airports across the world but, unlike the EC and UK regulations, are not legally binding.

Process for designation of an airport as 'co-ordinated'

7. The EC Regulation sets out the provisions by which a Member State may designate an airport as Co-ordinated :
- The Member State responsible shall ensure that a thorough capacity analysis is carried out at an airport with no designation status or at a schedules facilitated airport by the managing body of that airport or by any other competent body when that Member State considers it necessary, or within six months:
 - i) Following a written request from air carriers representing more than half of the operations at an airport or from the managing body of the airport when either considers that capacity is insufficient for actual or planned operations at certain periods; or
 - ii) Upon request from the Commission (Article 3:3)
 - On the basis of the analysis, the Member State shall consult on the capacity situation at the airport with the managing body of the airport, the air carriers using the airport regularly, their representative organisations, representatives of general aviation using the airport regularly and air traffic control authorities (Article 3:4)
 - Where capacity problems occur for at least one scheduling period, the Member State shall ensure that the airport is designated as co-ordinated for the relevant period only if:
 - i) The shortfall is of such a serious nature that significant delays cannot be avoided at the airport, and
 - ii) There are no possibilities of resolving these problems in the short term (Article 3:5)

Consultation on designation of London Luton Airport as "Co-ordinated"

8. In January 2012 London Luton Airport's operator contacted the Department for

Transport expressing their view that the airport required designation as “Co-ordinated”. They gave the following reasons:

- Congestion and disruption during peak operating periods caused by runway, taxiway, apron and passenger terminal operational capacity constraints, compounded by...
- Some ‘off-slot’ air operations above the capacity declared for Schedules Facilitated purposes, and...
- The complexity of airspace interactions in the South East, including the interdependency with movements to and from other airports (Stansted, London City, RAF Northolt) which can result in operational disruption to the airport’s air services.

9. The airport’s operator acknowledges that in the medium to longer term, proposed infrastructure developments (plans for which were set out in a public consultation, published in March) and resolutions of broader airspace constraints could deliver increased capacity. However, the operator concludes that in the short term a move to Co-ordinated slot allocation status could help make more efficient use of the existing airport infrastructure, leading to fewer delays and an improved passenger experience.

Capacity Analysis

10. The EC Regulation requires that an airport seeking a change to its slot co-ordination status must commission a thorough airport capacity analysis. This analysis, based on commonly recognised methods, shall determine any shortfall in capacity, taking into account environmental constraints at the airport in question. The analysis shall consider the possibilities of overcoming such shortfall through new or modified infrastructure, operational changes, or any other change, and the timeframe envisaged to solve the problems. It shall be updated when there are changes at the airport influencing significantly its capacity and capacity usage (Article 3).

11. London Luton Airport’s capacity analysis, which forms the basis of this consultation, was produced for the airport by consultants Leigh Fisher and is enclosed with this consultation. In summary, the analysis examines the airport’s capacity in the following areas:

Airspace, runway and taxiway capacity	pp 2-5
Apron capacity	pp 6-7
Passenger Terminal capacity	pp 9-11
Surface access capacity	pp 12-14

Department for Transport’s view

12. Overall, the Department for Transport considers that grounds for Level 3 Co-ordination to be imposed at London Luton Airport have been met in light of the potential for increased arrival and departure movements, coupled with the impact of ‘off-slot’ operations, into or within peak hours, to lead to excessive runway, taxiway and apron congestion, thereby degrading the airport’s operational efficiency and

causing consequent delays for air passengers.

Implications of co-ordination

13. The EC and UK regulations set out in detail the rights and responsibilities of airlines, airports and the co-ordinator that would apply if the airport is designated as co-ordinated. The key points of the articles likely to be of most relevance to this consultation are summarised below, although respondents should consider all the content of the regulations and if appropriate obtain independent legal advice.

EC regulations

14. A Co-ordinated airport is defined as an airport where, in order to land or take off, it is necessary for an air carrier or any other aircraft operator to have been allocated a slot by a co-ordinator, with the exception of State flights, emergency landings and humanitarian flights (Article 2).
15. The Co-ordinator shall be the sole person responsible for the allocation of slots. The process of allocation is managed according to “grandfather rights” for a series of slots (article 8: 2), whereby an air carrier that has used a series of slots for the operation of scheduled and programmed non-scheduled air services is entitled to continue using the same series of slots, albeit under conditions including the so-called “use it or lose it” rule (Article 10: 4).
16. Any newly created slots and others not allocated to air carriers on the basis of grandfather rights shall be placed into a slots pool, from which 50% of slots are allocated according to the ‘new entrant’ rule for pool slots allocation (Articles 2: b & 10: 6).
17. Slots can be transferred within the operations of an air carrier and its subsidiaries or exchanged between air carriers (article 8a: 1). A 2008 European Commission Communication clarified the Commission’s view that secondary slot trading, whereby the exchange of slots takes place with monetary and any other consideration, is compatible with the EC regulations.
18. The co-ordinator shall monitor the conformity of air carriers’ operations with the slots allocated to them (Article 4: 6).
19. Enforcement action may be taken by the co-ordinator against those airlines that do not operate according to the regulations (article 14), in particular by introducing sanctions for slot misuse (Article 14: 5).
20. A co-ordination committee has to be established and maintained. The co-ordination committee tasks shall be to make proposals or advise the co-ordinator and/or the Member State on issues including possibilities for increasing the capacity of the airport, the co-ordination parameters, the methods of monitoring the use of allocated slots and serious problems encountered by new entrants (Article 5: 1).
21. Membership of the co-ordination committee must be open to the air carriers using the airport regularly, their representative organisations, the managing body of the airport concerned, the relevant air traffic control authorities and the representatives

of general aviation using the airport regularly (Article 5: 1).

22. The determination of the parameters for slot allocation and the methodology used, as well as any changes thereto, shall be discussed in detail within the co-ordination committee with a view to increasing the capacity and number of slots available for allocation, before a final decision on the parameters for slot allocation is taken (Article 6: 3).

UK Slot Allocation Regulations 2006

23. The UK Slot Allocation Regulations 2006 state that a slot co-ordinator can only be appointed with the approval of the Secretary of State, following consultation. The Secretary of State can withdraw that approval if he is satisfied that a co-ordinator has acted in a way that is not independent, neutral, non-discriminatory and transparent (article 4).
24. A co-ordinator can, under certain circumstances, impose fines on air carriers if an air carrier repeatedly and intentionally abuses slots allocated to it (Article 16). Airlines can also be fined for failing to provide the coordinator with requested information (Article 7). ACL has adopted a Misuse of Slots Enforcement Code for operating the slots sanctions scheme at the airports where they act as co-ordinator (Article 5)¹.
25. The co-ordinator is not liable to damages relating to the exercise of functions under the EC or UK regulations, except in cases of gross negligence or wilful misconduct (Article 12).
26. The airport managing body is responsible for establishing and maintaining the co-ordination committee, and for determining the slot allocation parameters (Article 5).

Costs and benefits of designation as co-ordinated

27. There are a number of benefits and costs associated with the designation of London Luton Airport as a Co-ordinated airport arising from implementation of the arrangements set out in sections 18 and 19 above. Benefits include a likely reduction in potential delays to airlines and passengers and more efficient management of the airports capacity. Lower levels of delay to aircraft may have environmental benefits to the extent they reduce emissions.
28. The main costs are likely to arise to the airport managing body and airlines from operating and participating in the co-ordination process, including the cost of the co-ordinator.

Consultation on approval of ACL as Co-ordinator at London Luton Airport

29. If the Secretary of State decides to designate London Luton Airport as Co-ordinated, the EC and UK regulations require the airport operator to appoint a co-ordinator. Under the UK regulations, the Secretary of State then has to consider and approve

¹ SI2006/2665 : The Airport Slot Allocation Regulations 2006: Paragraph 18(1-8)

(or not) that appointment, following consultation with airlines using the airport, their representative bodies, the airport operator and, where one exists, the co-ordination committee.

30. As stated above, ACL is currently contracted to provide schedules facilitation services at London Luton Airport. The Department understands that, subject to the Secretary of State's approval, London Luton Airport proposes to appoint ACL as co-ordinator.
31. In deciding whether to approve ACL's appointment, the Secretary of State must be satisfied that ACL can carry out its functions as co-ordinator in an independent, neutral, non-discriminatory and transparent way.
32. It should be emphasised that the fact that ACL is currently contracted to provide informal schedules facilitation services at the airport does not mean that ACL should or must be approved as the co-ordinator for the purposes of the EC and UK regulations. It is possible that other persons might have the qualifications, including technical facilities, required for appointment. However, no alternative candidates have been proposed by London Luton Airport's operator.
33. ACL is an independent Company incorporated in England and Wales as a company limited by guarantee (registered number 2603583). ACL's Memorandum and Articles of Association are available for inspection at Companies House (www.companieshouse.gov.uk). ACL is owned by eight of the UK's leading airlines who each contribute towards its operation. The current Members are :

British Airways
Virgin Atlantic Airways
Monarch Airlines
Thomson Airways
Thomas Cook Airlines
Jet 2
Flybe
EasyJet
34. Any airline is eligible to become a member of ACL, and the Company welcomes applications.
35. ACL has been appointed as slot co-ordinator at the five UK airports currently designated as Co-ordinated and at the eight UK airports currently designated as schedules facilitated.
36. To ensure its independence, ACL's corporate governance arrangements provide that all decisions on schedules facilitation and co-ordination are taken entirely by ACL co-ordination staff led by the Head of Co-ordination, without reference to its Members. These Members provide proportion of ACL's funding, with the remainder coming from commercial services and the fees paid by airports where it is co-ordinator, schedules facilitator or data collection agent. Further details about ACL can be found on the company's website: www.acl-uk.org.

HOW TO RESPOND TO THE CONSULTATION

The Department for Transport would welcome consultees' views to inform the Secretary of State's consideration of the capacity analysis; whether or not London Luton Airport should be designated as Co-ordinated; and if so, whether to approve ACL as the co-ordinator for the airport.

A series of questions are set out in the separate **Consultation Response Form**. Wherever possible please give reasons or provide evidence to support your answers. You would also be welcome to include further views if you wish.

The consultation period will end on **Wednesday 25 July 2012**. Please send your consultation response by this date to :

geoff.latham@dft.gsi.gov.uk

Alternatively you can send your response by post to :

Geoff Latham
Aviation Directorate
Department for Transport
Zone 1/24
Great Minster House
33 Horseferry Road
London SW1P 4DR

This consultation document and response form can be found at **www.dft.gov.uk** or you can contact Geoff Latham at the address above if you would like alternative formats (eg braille, audio CD).

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Please could airline respondents indicate which airports they operate services from.

A list of consultees is also attached. If you have any suggestions for other organisations which may wish to be involved in this process, please contact us.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information

you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Next steps following the consultation

A summary of the consultation responses, including the next steps, will be published on the Department for Transport's website: www.dft.gov.uk. Paper copies will be available on request.

The Department for Transport will undertake a detailed study of the consultation responses, which will inform a final Impact Assessment and, subsequently, the Secretary of State's decisions on whether or not to designate London Luton Airport as Co-ordinated and, if so, whether or not to approve the appointment of ACL as co-ordinator.

The Secretary of State's decisions will be given before 1 September 2012, in time to be taken account of in the slot allocation process for the Summer 2013 scheduling season. The decisions and summary of responses to this consultation will be published on the Department's website.

If the Secretary of State's decision is to designate London Luton Airport as Co-ordinated, the co-ordination for summer 2013 will be carried out by the co-ordinator. The process for this is an issue for the airport operator, airlines and the co-ordinator to consider, and not part of this consultation.

The Code of Practice on Consultation

The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law).

The Code contains seven criteria. They should be reproduced in all consultation documents. Deviation from the code will at times be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

The Seven Consultation Criteria

1. When to consult: Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercises: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A full version of the code of practice is available on the Department for Business Innovation and Skills website : www.bis.gov.uk.

Reasons for an eight-week consultation

The Code of Practice (see above) suggests a consultation period of 12 weeks unless a longer/shorter timeframe is justified. In this case, however, the Secretary of State has agreed an eight week consultation period from 30 May for the following reasons:

- Consultees are mainly from the air transport industry, have experience and knowledge of London Luton Airport, and are familiar with the different levels of airport slot co-ordination.
- The airport operator has already made consultees aware of its intention to seek Co-ordinated status, and that a consultation on the issues would be taking place.

However, if you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

Chris Simon
Consultation Co-ordinator
Department for Transport
Zone 1/33 Great Minster House
76 Marsham Street
London, SW1P 4DR
email: consultation@dft.gsi.gov.uk

ANNEX B

Consultees contacted

Airlines

Adria
Aer Lingus / Aer Arann
Easyjet
EI AI
Flybe
Monarch
Ryanair
Thomsonfly
WizzAir

Air cargo operators

DHL
MNG Airlines
Atlantic Airlines

Business Aviation / GA

Harrods Air
Signature Flight Support
Ocean Sky
Netjets

Aviation industry and representative organisations

Airport Co-ordination Ltd
NATS
Airport Operators Association
British Air Transport Association
Board of Airline Representatives in the UK
British Business and General Aviation Association

Other organisations

London Luton Airport Consultative Committee (LLACC)
Luton Borough Council