



Department
for Transport

Civil Aviation Bill: making the transition to the new airport economic regulation framework

December 2012

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How to respond

The consultation period began on 10 December 2012 and will run for 7 weeks until 25 January 2013. Please ensure that your response reaches us before the closing date.

Please send consultation responses to

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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.

If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or 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 Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Introduction

The Civil Aviation Bill

1. The Civil Aviation Bill (“the Bill”) was introduced into the House of Commons on 19 January 2012 and completed its passage through Parliament on 20 November 2012. At the time of writing, the Bill is awaiting Royal Assent at the next available opportunity, which we anticipate will be before Christmas.
2. The Bill reforms the framework for airport economic regulation, which includes replacing the current 'one size fits all' approach with a modern licensing regime that puts the protection of passengers' and cargo owners' interests at its heart and supports efficient, focused investment in airport facilities. The Bill also modernises the framework and functions of the aviation regulator, the Civil Aviation Authority (CAA), and confers certain aviation security functions on the CAA.

Purpose of consultation

3. Schedule 10 of the Bill sets out the broad framework for transitioning from the current regulatory framework for airport economic regulation, as set out in Part IV of the Airports Act 1986 (“the 1986 Act”) and Part IV of the Airports (Northern Ireland) Order 1994 (“the 1994 Order”)¹, to the new regulatory framework as set out in Part 1 of the Bill.

¹ S.I. 1994/426. The Airports (Northern Ireland) Order 1994 makes provision for the economic regulation of airports in Northern Ireland, similar to those provisions in the Airports Act 1986 which applies to England, Wales and Scotland.

4. A Statutory Instrument in the form of a Commencement Order is required to commence Part 1 of the Bill including repealing the 1986 Act and the 1994 Order. The draft Commencement Order (the “draft Order”) is attached at Annex A². Put more simply, the draft Order lays out the proposed timetable for switching off certain provisions under the current framework and switching on certain provisions in the Bill.
5. The purpose of this consultation is to share this Order in draft to obtain your views on whether the proposed timing of the switching off of provisions under the present regime and the switching on of provisions under the new regime is consistent with the policy intention of providing a smooth transition from the airport economic regulation framework under the 1986 Act and the 1994 Order to that set out in the Bill. It is also an opportunity to raise any unidentified consequences for the proposed timings.
6. The draft Order should be read in conjunction with the relevant provisions, in particular Schedule 10, in the Bill³. The explanatory notes to the Bill⁴ and the explanatory notes concerning amendments made in the House of Lords⁵ also provide additional detail on the purpose and function of provisions in the Bill.
7. There are questions towards the end of this document to which consultees are invited to respond.
8. It should be noted that the draft Order may be subject to changes other than any that may result from this consultation. Any such changes are likely to be clarificatory or technical.
9. It is our intention that the draft Order will come into force not before 1 April 2013 subject to the date of Royal Assent of the Bill.

² The Order will have an explanatory note on the final page when it comes into force. The explanatory note does not form part of the Order.

³ The latest version of the Bill is available

<http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0052/2013052.pdf>

⁴ The latest version of the Bill explanatory notes (those which accompanied the Bill when it entered the House of Lords) can be found here

<http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0026/en/13026en.pdf>.

⁵ <http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0090/en/2013090en.pdf>

10. There will be further Statutory Instrument(s) required to commence other parts of the Bill. These will include provisions to bring into force further necessary consequential amendments to secondary legislation as a result of provisions in the Bill being commenced. Some of these Statutory Instruments may be subject to consultation if that is considered necessary or appropriate.

Structure of document

11. The section titled “Policy intention” below sets out the background and overarching policy intention of delivering a smooth transition from the current to the new regulatory regime for airport economic regulation. The subsequent section titled “The draft Commencement Order” provides an initial overview of the draft Order and then goes into greater detail of the purpose and effect of each draft Article.

Policy intention

Background

12. Under the 1986 Act and the 1994 Order, a permission to levy airport charges must be held in respect of airports whose operators have an income above a certain threshold. Without such a permission the operator cannot legitimately levy airport charges. Once there is a permission in place the CAA can impose certain conditions relating to the conduct of the operator. The Secretary of State⁶ may also designate airports. At designated airports the CAA carries out regular price reviews to set the maximum price that the airport operator of a designated airport can charge its airline customers. At the three designated airports (Heathrow, Gatwick and Stansted) the current price controls (“Q5”) run until 31 March 2014. In addition, the CAA can set public interest conditions at the designated airports following adverse findings by the Competition Commission.
13. Under the 1986 Act and the 1994 Order, airports in respect of which there is a permission to levy airport charges are also statutory undertakings (and their operators are statutory undertakers) for the purposes of planning and other legislation.
14. The regulatory regime changes in a number of ways under the Bill. The operator of a dominant area⁷ located at a dominant airport is not allowed to levy charges unless it holds a licence for that area. Licences may include conditions on charges but these do not have to be in the form of a price cap as now. The CAA is currently reviewing the regulatory regime that should apply at Heathrow, Gatwick and Stansted after 1 April 2014 (known as Q6).

⁶ The Secretary of State is responsible for airports in Great Britain only. The Minister for the Northern Irish Department for Environment has responsibility for airports in Northern Ireland.

⁷ The terms “dominant airports” and “dominant areas” are used in the Bill, see clause 5.

15. Under the Bill, the CAA must carry out a market power test to determine if the airport area is dominant. For an area to be found to be dominant, the CAA must find (and publish) that;
- a. the operator of that area has, or is likely to have, substantial market power in a market;
 - b. competition law does not provide sufficient protection against the risk of abuse by the operator in question of that substantial market power; and
 - c. for users of air transport services, the benefits of regulation by licence outweigh the adverse effects⁸.
16. However, the Bill needs to be enacted in good time to allow the CAA to carry out relevant market power tests, to prepare for Q6 and to develop and consult on any licences that may be required.
17. As well as this, various provisions in the 1986 Act and the 1994 Order will also need to remain in force so that the current price controls are not disturbed and any relevant enforcement arrangements will continue to take effect.
18. Therefore, to ensure a smooth transition to the new regime, Schedule 10 of the Bill sets out how the transition arrangements will work. Principally, it makes provision for the main operators of the three airports that are currently designated under the 1986 Act⁹ (Heathrow, Gatwick and Stansted) to be automatically “deemed” to have met the market power test. The provisions in the Bill will apply as if the CAA had made a determination that the market power test is met in respect of the area of the airport that the main operators have management responsibility for. The main operators of the designated airports will automatically be subject to the regulatory regime under the Bill, unless the CAA determines otherwise following an actual market power test under clause 6 of the Bill.

⁸ Please see clause 6 for full market power test provisions.

⁹ No airports are designated for regulation under the 1994 Order.

19. All other airports will automatically fall out of the regulatory regime unless and until the CAA carries out a market power test and determines that the test is met. Airports in respect of which there is currently a permission to levy airport charges will retain the status of statutory undertakings and their operators will continue as statutory undertakers.
20. This section of the consultation document explains in more detail the policy intentions for the transition period for the three “deemed” dominant airport areas and the relevant operators and describes how the transition arrangements will work.

Policy Objectives

21. Our objectives for transitioning to the new framework for airport economic regulation are to:
 1. minimise uncertainty by ensuring the transition to the new regulatory regime does not disturb the basis on which the current price caps at airports designated under the 1986 Act (i.e. Heathrow, Gatwick and Stansted) have been set before their expiry on 31 March 2014 (unless the CAA decides in the interim period that the airport operator has not met the market power test);
 2. ensure the CAA can use its new regulatory powers to develop Q6 which is due to commence on 1 April 2014, so that benefits to passengers and cargo owners are realised as soon as possible; and
 3. remove unnecessary regulation at the earliest opportunity.
22. These objectives are consistent with our overall aim to introduce the new regulatory framework as soon as possible, as the current

regime is acknowledged to be out of date, disproportionate and inflexible.

23. Our commitment to minimising uncertainty is long-standing. In March 2011¹⁰, the Secretary of State for Transport announced:

“I am keen to ensure that there is a smooth transition to the new regime and we will work with the CAA and industry to achieve this. In particular, the Government will not be making changes to the basis on which the current price caps at Heathrow, Gatwick and Stansted are set.”

24. It is our intention to realise the benefits contained within the Bill, including removing Government’s role in the designation of airports, giving rights of appeal for materially affected parties and allowing for the deregulation of non-designated airports (that presently also require a permission to levy airport charges), while not disturbing the current price control settlements at designated airports if regulation is still required.

Timing

25. The draft Order refers to “DATE A” and “DATE B”. DATE A will be the date on which the Order is made (i.e. signed by the Minister of State) and on which most of Part 1 of the Bill will come into force¹¹. So that is the date which will appear where the text in the draft Order presently refers to “DATE A”. On and from this date Part IV of the 1994 Order will be fully repealed with some exceptions for enforcement purposes. “DATE B” is 1 April 2014, the date on and from which the 1986 Act will be fully repealed with some exceptions for enforcement purposes.

¹⁰ Written Ministerial Statement, 3 March 2011

<http://www.dft.gov.uk/news/statements/hammond-20110303/#>

¹¹ See Article 2 of the draft Order.

26. The draft Order reflects the definition of interim period¹² in Schedule 10 of the Bill, which will be the period beginning on DATE A and ending on 31 March 2014. This interim period will cover the remainder of the current price control period (Q5) for existing airports designated under the 1986 Act.

Further considerations

27. The repeal of the 1986 Act and the 1994 Order will not affect the status of an airport which holds a permission to levy airport charges as a statutory undertaking for the purposes of Part V of the 1986 Act or Article 25 of the 1994 Order¹³. The status of statutory undertaking will continue to be conferred on airports where the annual turnover of the business carried on by their operator exceeds £1 million in at least two of the last three financial years.

28. In addition to bringing into force the airport economic regulation provisions in Chapter 1 of Part 1 of the Bill and Chapter 3 (general provision) which deals with interpretation and general matters, consultees will wish to be aware that Chapter 2 (competition) will also be brought into force through Article 2(1) of the draft Order at the same time in line with the policy of realising the benefits that these new provisions offer as soon as possible.

29. Chapter 2 will be brought into force from DATE A. Chapter 2 provides the CAA with concurrent competition powers with the Office of Fair Trading to enable the CAA to make use of its detailed sectoral knowledge in the relevant markets for airport operation services. The CAA will be given powers to investigate and enforce against prohibitions on anti-competitive behaviour under the Competition Act 1998 and the Treaty on the Functioning of the European Union, and to make a market investigation

¹² See Article 1(2) of the draft Order.

¹³ See Schedule 8 Parts 1 and 2 and Schedule 10 Part 2 of the Bill.

reference to the Competition Commission under the Enterprise Act 2002.

30. During the interim period, sections of the 1986 Act and articles in the 1994 Order will continue to apply. This is intended to allow the CAA to complete work by 1 April 2014, such as investigations under section 41 of the 1986 Act or Article 39 of the 1994 Order. For example, the draft Order provides that any new section 41 complaints received after DATE A may be dealt with using the concurrent competition powers that the CAA will acquire on DATE A. The net effect will be that if a complaint about the conduct of the operator of a designated airport is submitted to the CAA during the interim period, the CAA will have to consider whether such a complaint would be best examined under section 41 of the 1986 Act, the Competition Act 1988, the Airport Charges Regulations 2011¹⁴ or the Airports (Groundhandling) Regulations 1997¹⁵. There is likely to be a presumption in favour of either the Competition Act 1998 or, as appropriate the Airport Charges Regulations 2011 or the Airports (Groundhandling) Regulations 1997 because the CAA's powers to examine conduct under section 41 will cease to apply after DATE B.

Delivering a smooth transition

Schedule 10 and the draft Order

31. Schedule 10 to the Bill contains the key elements for the transition to Part 1 of the Bill from the existing regulatory regime set out in Part IV of the 1986 Act and Part IV of the 1994 Order.
32. For those airports not designated under the 1986 Act or the 1994 Order on DATE A, paragraphs 2 and 3 of Schedule 10 to the Bill do not apply. Under paragraph 5(1) and (2) of Schedule 10 such

¹⁴ S.I. 2011/2491

¹⁵ S.I. 1997/2389

airports may not be designated under the 1986 Act or the 1994 Order and will instead, by virtue of the draft Order, be subject to regulation under Part 1 of the Bill. However, as these airport operators will not be deemed to have passed the market power test on DATE A, they will only become subject to regulation if the CAA subsequently makes a determination that the operator has met the market power test. Therefore, the general expectation is that non-designated airports will be removed from economic regulation from DATE A.

33. For those airports designated under the 1986 Act or the 1994 Order on DATE A, Schedule 10 will apply. The effect of these provisions is that the main operators of the three currently designated airports under the 1986 Act will be deemed under paragraph 2(2) to have met the market power test. The provisions are focused only on the main airport operator: i.e. the airport operator who is presently subject to price control and other conditions imposed under the 1986 Act.
34. Paragraph 2(2) of Schedule 10 provides that, on DATE A, the operators of designated airports will be deemed to have met the market power test set out in clause 6 the Bill. The effect of paragraph 2(4) is that the CAA may not treat this determination as having been previously made for the purposes of clause 7(5). Therefore the CAA could not refuse a request for a new market power determination from the operator of the airport area and/or other persons whose interests are likely to be materially affected by the determination on the basis that there has been no material change of circumstances since the deemed market power determination.
35. Under paragraph 2(6) of Schedule 10 there can be no appeal in relation to a deemed market power determination under paragraph 2(3) in relation to airports that are designated as of the commencement day. But this does not remove the right of appeal under clause 13 of the Bill and Schedule 1 where a market power determination is made in response to a request made to the CAA

after DATE A. The CAA is obliged to respond to a request made by the operator of the airport area in question or a person whose interests are likely to be materially affected by the determination (see clause 7 of the Bill).

36. Paragraph 3(2) of Schedule 10 provides an exemption during the interim period from the prohibition on charging for airport operation services under clause 3. In brief, clause 3 prevents operators of all or part of a dominant area from requiring others to pay relevant charges for airport operation services provided in that airport area if the operator of the area does not have a licence. The exemption under paragraph 3(2) applies to any airport which is a designated airport on DATE A. This is additional to the provisions at clause 4 of the Bill which applies to the operator on the day on which the CAA determines that an area is a dominant area at a dominant airport. This allows for the operator to be treated as having a licence for a specified period and the prohibition in clause 3 does not apply for that period.

The draft Commencement Order

Overview

37. The draft Order contains six Articles, each with specific purposes.
38. Article 1 sets out common definitions used in the Order.
39. Article 2(1) would bring into force much of Part 1 of the Bill, and therefore gives the CAA powers from DATE A to undertake market power determinations, and if appropriate bring any operators (save for those that are deemed to have passed the market power test under paragraph 2(2) of Schedule 10 to the Bill) into regulation under the Bill's provisions. It also allows CAA to prepare licences for those deemed operators.
40. Article 2(2) proposes to leave Part IV of the 1986 Act in force during the interim period, except for a small number of sections that are or will be redundant, subject to transitory provision intended to have the effect that non-designated airports are not subject to regulation under the 1986 Act for that period.
41. Article 2(3) brings into force certain consequential provisions in Schedule 9 to the Bill, which will be needed in relation to Part 1 of the Bill. For example, provisions adding new references to that Part in lists of exceptions from restrictions on disclosure.
42. Article 3 modifies the 1986 Act for operators of airport areas deemed to have met the market power test under Schedule 10 to the Bill during the interim period and has the effect of ensuring during the interim period they continue to be subject to their existing price controls. During which time the exemption on the prohibition on levying airport charges under the Bill will apply so they will not require a licence (and thus will not be subject to dual regulation).

43. Article 4 contains savings provisions for articles in the 1994 Order which will enable enforcement action to be taken after DATE A regarding breaches of conditions set out under that Order occurring before DATE A and preserves enforcement powers required with regard to the Airport Charges Regulations 2011.
44. Article 5 brings into force the remaining provisions in Part 1 of the Bill on DATE B, which has the effect of repealing the remainder of Part IV of the 1986 Act.
45. Article 6 contains savings provisions for the 1986 Act which will enable enforcement action to be taken regarding breaches of conditions by designated airports under the 1986 Act occurring before DATE B and preserves enforcement powers required with regard to the Airport Charges Regulations 2011. A similar saving provision for airports not designated under the 1986 Act is set out at Article 3(2) to have the same effect in respect of the enforcement of breaches under the 1986 Act preceding DATE A.

Purpose and effect of the Commencement Order

Article 1

46. Article 1 sets out the citation for the draft Order and contains definitions of key terms used in the draft Order. In particular, the definitions of “designated airport” and “the interim period” reflect the definitions set out in Schedule 10.

Article 2

47. Article 2 would bring Part 1 of the Bill into force on DATE A, subject to the transitional provisions in Schedule 10 to the Bill.
48. Article 2(1) provides that on DATE A, with some exceptions, the provisions in Part 1 of the Bill will come into force. The policy reasons for bringing into force Part 1 on this date for all airports

include empowering the CAA to use the new legislation to bring relevant operators of airport areas not deemed to be dominant into regulation, if appropriate, and to facilitate the CAA's work in preparing licences for the those designated airports whose operators will be deemed to have met the market power test.

49. Article 2(2) provides that on DATE A clause 76(1) of the Bill comes into force but only so far as it relates to the repeal of the sections of the 1986 Act listed in paragraphs (a) to (f).

- The effect of Article 2(2)(a), repealing section 37(2) to (7), (9) and (10) of the 1986 Act is that airports subject to economic regulation no longer require a permission to levy airport charges.
- The repeal of section 38 of the 1986 Act in Article 2(2)(b) means that the CAA no longer has the power to grant or refuse a permission to levy airport charges under the 1986 Act. This is consequential on Article 2(2)(a)
- The repeal of section 40A of the 1986 Act in Article 2(2)(c) means that no airport can be designated under the 1986 Act from DATE A, which is consistent with paragraph 5(1) of Schedule 10 to the Bill.
- The effect of Article 2(2)(d) repealing section 40B of the 1986 Act is that no market power examinations will thereafter be made under the 1986 Act from DATE A but rather market power determinations will be made under Part 1 of the Bill.
- Article 2(2)(e) repeals section 41(1) meaning that the CAA cannot impose discretionary accounts conditions on those airports not designated under section 40 of the 1986 Act from DATE A.
- Article 2(2)(f) repeals section 53 of the 1986 Act which is now historic and no longer relevant.

50. The policy reason behind the repeal of these sections and the 1994 Order on DATE A is to ensure that for those airports not designated under the 1986 Act or the 1994 Order on DATE A, the provisions in Part 1 of the Bill will apply and any regulation put in place from that date will be under the new regime in Part 1 of the Bill.
51. Article 2(3) concerns Schedule 9 which contains the airport economic regulation consequential amendments to primary legislation. Article 2(3) has the effect of bringing into force only certain provisions in Schedule 9 that are needed to complement Part 1 of the Bill. These include provisions adding new references to Part 1 of the Bill in the list of exceptions from restrictions in other enactments. Not all provisions in Schedule 9 are brought into force at this time as the references to the 1986 Act are still required in other legislation for airports that are designated until 31 March 2014. Article 5(1)(b) brings into force the remainder of Schedule 9 on 1 April 2014 following the repeal of the 1986 Act (but with some exceptions for enforcement purposes).
52. Article 2(4) of the draft Order also brings into force clause 104 (Regulatory burdens) on DATE A. This section places a duty on the CAA not to impose or maintain unnecessary burdens. This section is brought into force at this time as the duty applies to all of the CAA's functions under Chapter 1 of Part 1 of the Bill and also applies to the CAA's regulation of air traffic services under Chapter 1 of Part 1 of the Transport Act 2000.

Article 3

53. Article 3 modifies the operation of Part IV of the 1986 Act for designated airports during the interim period.
54. While Article 2 will repeal certain provisions in the 1986 Act, for the purposes of the interim period, airports designated under the 1986 Act will continue to be regulated in accordance with Part IV of that

Act¹⁶. Article 3 provides modifications to ensure only designated airports are subject to Part IV during the interim period.

55. Article 3(1) sets out how Part IV of the 1986 Act will operate during the interim period, between DATE A and 31 March 2014. Paragraphs (a) to (d) treat references to permissions under Part IV as references to a designated airport. In effect, this ensures that only designated airports remain subject to regulation under Part IV.
56. Article 3(2) is a saving provision to enable the CAA to continue to take enforcement action under the 1986 Act in respect of breaches of conditions before the beginning of the interim period (i.e. before DATE A).

Article 4

57. Article 4(1) contains saving provisions for Articles 27(1), 30(2) and (3), 39 to 41 and paragraphs 9 to 11 of Schedule 6 to the 1994 Order¹⁷. These provide that these particular provisions continue to have effect to enable the CAA to take enforcement action in respect of breaches of conditions imposed under Part IV of the 1994 Order before DATE A.
58. Article 4(2) contains savings provisions for Articles 27(1), 30(2) and (3), 39, 40, 46, 48 and paragraphs 9 and 10 of Schedule 6 to the 1994 Order. These provisions enable enforcement action to continue to be taken by the CAA for certain breaches of the Airports Charges Regulations 2011¹⁸.

¹⁶ If during the interim period the CAA publishes a determination that the operator of an airport, that was designated under Part IV of the Airports Act 1986, does not satisfy the market power test, then Schedule 10 of the Bill provides that the Secretary of State must revoke the Order designating the airport.

¹⁷ The conditions also bind associated companies of the airport operator and Schedule 6 modifies the preceding sections for that purpose.

¹⁸ S.I. 2011/2491. Part 6 of the Regulations contains provision relating to the breach and enforcement of obligations placed on airport operators under these regulations and enables the CAA to require, by means of a compliance order, an airport to take the necessary steps to meet obligations placed on it. Regulation 22 applies provisions which relate to the validity and enforcement of compliance orders under 1986 Act and 1994 Order.

59. The saving provisions concerning the 1994 Order are brought in from DATE A because no airports are currently designated under the 1994 Order, nor are any expected to be so in the near future.

Article 5

60. Article 5 commences provisions in the Bill which will repeal Part IV of the 1986 Act on DATE B, immediately after the expiration of the current price control settlements (Q5) at Heathrow, Gatwick and Stansted.

61. Article 5 has the effect of repealing the remaining parts of the 1986 Act for designated airports (other airports will no longer have been subject to these provisions from DATE A) who will be regulated under the economic regulatory regime in Part 1 of the Bill.

62. Article 5(1)(b) provides that those provisions in Schedule 9 to the Bill not yet in force are brought into force. These provisions are not being brought in until 1 April 2014 as these amendments are consequential on the full repeal of Part IV of the 1986 Act.

Article 6

63. Article 6(1) contains saving provisions for sections 36(1), 39(2) and (3), 48 to 50 and 55, and paragraphs 9 to 11 of Schedule 1 to the 1986 Act. In effect, this enables the CAA to take enforcement action against the operator of any airport for failure to comply with any conditions imposed under the 1986 Act before 1 April 2014.

64. The reasons for preserving these sections is to allow for the investigation of antecedent breaches and for appropriate enforcement action to be taken after the general repeal of Part IV in respect of breaches of conditions which occurred before DATE B. For example, where the CAA has begun to investigate a potential breach of a compliance order under section 48 the CAA will be able to continue to pursue appropriate enforcement.

65. Article 6(2) contains saving provisions for sections 36(1), 39(2) and (3), 48, 49, 55 and paragraphs 9 and 10 of Schedule 1 to the 1986 Act. These saving provisions are required as they are necessary to enable the CAA to take enforcement action for breaches of the Airport Charges Regulations 2011.

Consultation questions

1. Do you believe the timings set out in the draft Commencement Order for switching off certain provisions in the 1986 Act and the 1994 Order and switching on provisions in the Civil Aviation Bill are consistent with the policy aim of ensuring a smooth transition between the regimes?

Insofar as you may disagree, please explain why.

2. With regard to providing a smooth transition between the airport economic regulation regimes, are there any provisions in the Bill you believe should be brought into force at an earlier or later date?

If so, please explain why.

3. Do you foresee any unintended consequences associated with the timings as set out in the draft Commencement Order?

If so, please explain what these are.

What will happen next

A summary of responses will be issued a month after the end of the consultation period. A summary of any actions taken as result of the consultation will also be issued.

The Bill must receive Royal Assent before the Commencement Order can come into force. Subject to the Parliamentary timetable, it is our intention for the Commencement Order to come into force not before 1 April 2013.

Annex A Draft Commencement Order

STATUTORY INSTRUMENTS

2013 No. 0000

CIVIL AVIATION

Civil Aviation Act 20[.] Commencement, Transitional, Transitory and Saving Provisions) Order 2013

Made - - - - *2013*

The Secretary of State makes the following Order in exercise of the powers conferred by section 110(1), (4), (5) and (6) of the Civil Aviation Act 20[.](¹).

Citation and interpretation

1.—(1) This Order may be cited as the Civil Aviation Act 20[.] (Commencement, Transitional, Transitory and Saving Provisions) Order 2013.

(2) In this Order—

“the 1986 Act” means the Airports Act 1986⁽²⁾

“the 1994 Order” means the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 NI)⁽³⁾

“the 20[.] Act” means the Civil Aviation Act 20[.](⁴).

“the 2011 Regulations” means the Airport Charges Regulations 2011⁽⁵⁾.

“designated airport” means an airport (as defined in the 1986 Act or the 1994 Order) which is designated for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order;

⁽¹⁾ 20[.] C.x
⁽²⁾ 1986 C.31
⁽³⁾ S.I. 1994/426 NI
⁽⁴⁾ 20[.] C.x
⁽⁵⁾ S.I. 2011/2491

“the interim period” means the period beginning on the day on which this Order was made and ending with 31 March 2014.

Provisions coming into force on [date A] [*i.e. the day on which this Order is made*]

2.—(1) Part 1 of the 20[.] Act (AIRPORTS) comes into force on [DATE A], subject to paragraphs (2) to (3).

(2) On [DATE A] section 76(1) of the 20[.] Act comes into force only so far as it relates to the repeal of the following provisions of Part IV of the 1986 Act—

- (a) section 37(2) to (7), (9) and (10) (Airports subject to economic regulation: requirement for permission to levy airport charges),
- (b) section 38 (Grant or refusal of permissions),
- (c) section 40A (Designation of certain regulated airports),
- (d) section 40B (Market power examinations),
- (e) section 41(1) (Discretionary conditions in relation to airports that are not designated), and
- (f) section 53 (Functions in relation to permissions and conditions initially exercisable by Secretary of State).

(3) On [DATE A] only the following provisions of Schedule 9 (Regulation of operators of dominant airports: consequential provision) of the 20[.] Act come into force -

- (a) paragraph 2,
- (b) paragraph 3(2)(b) and (3)(b),
- (c) paragraphs 5 to 8,
- (d) paragraphs 10 to 13, 14(1), (2)(b) and (3)(b), 15 and 16, and
- (e) paragraph 17 so far as it relates to the repeal of –
 - (i) paragraphs 11(2) and (4) and 12 of Schedule 9 to the Enterprise Act 2002,
 - (ii) paragraph 33(3) to (6) of Schedule 25 to that Act, and
 - (iii) paragraph 26 of Schedule 6 to the Serious Crime Act 2007,

and section 76(4) of the 20[.] Act (which gives effect to Schedule 9 to that Act) comes into force only to the extent that it relates to those provisions of that Schedule.

(4) Section 104 (Regulatory burdens) comes into force on [Date A].

Operation of Part IV of 1986 Act during the interim period

3.—(1) During the interim period, Part IV of the 1986 Act has effect with the following modifications—

- (a) references to an airport subject to economic regulation under that Part are to be treated as references to an airport that is designated under that Part,
- (b) references to the granting, or revoking, of a permission under that Part in respect of an airport are to be treated as references to the making of an order designating, or revoking the designation of, an airport,

(c) references to a permission being or continuing in force under that Part in respect of an airport are to be treated as references to the airport being designated under that Part, and

(d) the reference in section 51(8) to a copy of a permission in respect of an airport is to be treated as a reference to a copy of an order designating the airport.

(2) Nothing in this Article prevents action being taken under Part IV of the 1986 Act in respect of any failure before [DATE A] to comply with conditions imposed under that Part in relation to an airport.

Savings on and after DATE A (Northern Ireland)

4.—(1) Despite the commencement of the revocation of Part IV of the 1994 Order, Articles 27(1), 30(2) and (3), 39 to 41 of, and paragraphs 9 to 11 of Schedule 6 to, that Order continue to have effect on and after DATE A in relation to any failure before [DATE A] to comply with conditions imposed under Part IV of that Order.

(2) Despite the commencement of the revocation of Part IV of the 1994 Order, Articles 27(1), 30(2) and (3), 39, 40, 46 and 48 of, and paragraphs 9 and 10 of Schedule 6 to, that Order continue to have effect on and after [DATE A] for the purposes of the 2011 Regulations.

Provisions coming into force on [DATE B] [*i.e.* 1 April 2014]

5.—(1) In so far as they are not already in force, the following provisions of Part 1 of the 2012 Act come into force on [DATE B]—

(a) section 76(1) (repeal of Part IV of the Airports Act 1986), and

(b) section 76(4) and Schedule 9 (Regulation of operators of dominant airports: consequential provision).

Savings on and after DATE B (England and Wales and Scotland)

6.—(1) Despite the commencement of the repeal of Part IV of the 1986 Act, sections 36(1), 39(2) and (3), 48 to 50 and 55 of, and paragraphs 9 to 11 of Schedule 1 to, that Act continue to have effect on and after [DATE B] in relation to any failure before [DATE B] to comply with conditions imposed under that Part.

(2) Despite the commencement of the repeal of Part IV of the 1986 Act, sections 36(1), 39(2) and (3), 48, 49 and 55 of, and paragraphs 9 and 10 of Schedule 1 to, that Act continue to have effect on and after [DATE B] for the purposes of the 2011 Regulations.

Signed by authority of the Secretary of State for Transport

Date

Simon Burns
Minister of State
Department for Transport

Annex B Consultation Principles

This consultation is being conducted in line with the Government's key consultation principles. This consultation is targeted at those with a particular interest in the timing and effects of moving from the airport economic regulation regime under the Airports Act 1986 and the Airports (Northern Ireland) Order 1994 to the Civil Aviation Bill, and who have been interested in the development of the Civil Aviation Bill. We welcome responses to this consultation from any interested party, but believe that the specialist nature of the content makes it appropriate to issue this consultation to a targeted audience.

Further information is available on the Better Regulation Executive website at <https://update.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

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