



Airport Licence Condition Appeal Rules: Competition Commission Guide

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Introduction

1. This brief Guide has been prepared to assist participants involved in airport licence appeals under the Civil Aviation Act 2012 (the Act). In particular it draws attention to provisions of the Act relevant to such appeals. It may be revised and supplemented from time to time and as the Competition Commission (CC) gains experience of such appeals. Comments in this Guide are not intended to bind the CC in its consideration of particular cases.
2. The CC has published procedural rules, the *Competition Commission Airport Licence Condition Appeal Rules (CC19)*, to govern these appeals. This Guide should be read in conjunction with the Act and those Rules.
3. The Rules and Guide refer to the CC throughout. On 1 April 2014 the functions of the CC, will be transferred to the Competition and Markets Authority (CMA).¹ Subject to their adoption by the CMA Board, the Rules and Guide will be kept under review, in the light of the CMA's developing practice and case experience.
4. In every case, the CC will look for a high degree of cooperation from participants. The CC expects appellants to be realistic in drafting their grounds of appeal and all participants to present their submissions clearly.
5. This Guide does not contain details of all the provisions of the Act and the Rules relevant to appeals and is not intended to modify or constrain the full application of those provisions to particular cases.

Background

6. The Civil Aviation Act 2012 introduced a new system of economic regulation for airports. Under the Act, operators of 'dominant areas' located at 'dominant airports' require a licence to levy charges for airport operation services. The licence must include a provision specifying the area covered by the licence. The need for a licence applies to all charges for airport operation services at the airport, not just those levied in respect of the dominant airport area for which the licence is required. A licence may include such conditions as the Civil Aviation Authority (CAA) considers necessary or expedient in relation to risks of abuse of market power, including price control conditions. It may also include any other licence conditions the CAA considers necessary or expedient having regard to its duties under section 1 of the Act.
7. An airport area is dominant for these purposes if the CAA makes a determination that the market power test set out in the Act is met in relation to the area and publishes a notice to that effect (a 'market power determination'). The Act also empowers the CAA to determine who has overall responsibility for the management of an airport area, including in cases where one or more separate entities have some form of management control over the airport area (an 'operator determination').
8. Appeals in relation to market power determinations and operator determinations by the CAA² can be made to the Competition Appeal Tribunal (CAT).
9. Appeals against decisions by the CAA to include, or not to include, a condition in a licence when it is granted, and decisions to modify such licence conditions can be

¹The CMA is established under the Enterprise and Regulatory Reform Act 2013 as the UK's economy-wide competition authority. It promotes competition for the benefit of consumers and aims to make markets work well for consumers, businesses and the economy.

² The CAT also has other appellate functions relating to the CAA, see for example, Schedules 1, 3, 4 and 5 to the Act.

made to the CC by the holder of the relevant licence or a provider of air transport services (ie airlines) whose interests are materially affected by the decision.³ This appeal mechanism replaces the CC's previous role in quinquennial reviews under the Airports Act 1986 (where designated airports were subject to mandatory five-year price caps).

10. The functions of the CC in relation to appeals under the Act will transfer to the CMA with effect from 1 April 2014. Any applications or appeals to the CC that are under consideration at the end of 31 March 2014 will then become the responsibility of the CMA. It is not expected that the transfer of these functions will affect the conduct of any ongoing applications or appeals. It is anticipated that the decision takers on any ongoing matters (authorised members, and the members of any CC Group⁴) will remain the same (in relation to which see paragraphs 57 and 58 below).

Appeals to the CC

11. The CC may allow appeals only to the extent that it is satisfied that the CAA decision was wrong on one or more of the following grounds: that the decision was based on an error of fact, that the decision was wrong in law, or that an error was made in the exercise of a discretion.⁵ To the extent that the CC does not allow the appeal, it must confirm the decision appealed against.⁶
12. If the CC allows the appeal, it must do one or more of the following:⁷
 - (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 Chapter 1 of the Act and any directions given by the CC; and/or
 - (c) substitute its own decision for that of the CAA.
13. In determining the appeal, the CC must have regard to the matters in respect of which duties are imposed on the CAA by section 1 of the Act.⁸
14. The CC must not have regard to any matter, information, or evidence raised or provided by the CAA or persons other than the CAA if it was not considered by the CAA in making the decision that is the subject of the application or appeal, unless the CC considers that:⁹
 - (a) the party raising the matter could not reasonably have raised the matter with the CAA¹⁰ during the period in which the CAA was making that decision; and

³ Sections 24(2) and 25(2) of the Act.

⁴ The transitional arrangements are not yet finalised. But the expectation is that members of the CC Group appointed to determine any application or appeal under the Act will be appointed to the CMA panel under paragraph 1(1)(b) of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 and constituted as a CMA Group to continue to determine the application or appeal under the Act.

⁵ Section 26 of the Act.

⁶ Section 27(1) of the Act.

⁷ Section 27(2) of the Act.

⁸ Section 30(2) of the Act obliges the CC to have regard to the considerations of principle that are incumbent on the CAA by virtue of section 1 of the Act.

⁹ Paragraphs 23(2) and (3) of the Schedule.

¹⁰ If the CAA is the party raising the matter, information or evidence, the test is that the CAA could not reasonably have been expected to consider the matter, information or evidence when making that decision.

(b) the matter, information, or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.

15. The CC must determine the appeal by publishing an order containing its decision, with reasons.¹¹

A fair and efficient process

16. The rules set an administrative deadline on the CAA of two weeks from the day on which the CC grants permission to appeal for the making of representations on the appeal under paragraph 19 of the Schedule. Once permission is granted the Act requires the CC to determine the appeal within 14 weeks (extendable by eight weeks).¹² This is a tight time frame and therefore it is important that the CC receives any evidence from the CAA as close to the start of this period as possible. The CC considers that the presumption of a two-week deadline for the CAA is appropriate having regard to the overall statutory time frame for these appeals. As this is an administrative deadline (rather than a statutory one), it will be open to the Group determining the appeal to vary this time period having regard to the circumstances of the appeal.
17. The rules do not set deadlines for other possible stages in the appeal process not subject to a statutory deadline; for example, for the CAA and other parties to the appeal in relation to the making of representations on any application for permission to intervene and any application to suspend the CAA's decision (excluding early applications where there is a statutory deadline); or for the appellant and any interveners in relation to making any representations in reply to the CAA's representations under paragraph 19. The CC expects to set administrative deadlines for such actions in particular cases having regard to the particular matters raised in the relevant cases.
18. The rules seek to ensure that the CC has flexibility to manage appeals fairly and expeditiously, having regard to the interests of the parties to the appeal and the statutory time frames. This sentiment is reflected in the overriding objective set out in Rule 3. Those involved in appeals are required to assist the CC to further this objective. The CC notes in this regard that the time periods prescribed by the Act can leave a very short window for other parties to respond to applications, and for decision taking by the CC. Accordingly, it strongly encourages all parties involved in proceedings to act in a manner that gives a reasonable time for others to respond to their applications, to assist the CC ultimately to perform its functions as effectively as possible. In every case, the CC will look for a high degree of cooperation from participants. The CC expects applicants to be realistic in drafting their grounds of appeal and all participants to present their submissions clearly.

Publication and notification requirements

19. The Act requires the CC to publish its decision and the reasons for the decision on applications for permission to appeal, for permission to intervene and for a direction under paragraph 9 or paragraph 12 of the Schedule. The CC must also send a copy of these decisions and reasons to persons specified in the Schedule. Generally, these persons include the licence holder which is the subject of the application or

¹¹ Section 29 of the Act.

¹² This timing assumes that the prior steps in the appeal process took place on the last day permitted by the Act. If any of these steps occur earlier than the last permitted day, the timing for the CC to make its determination will be longer.

direction, any other person with a qualifying interest in the decision that is the subject of the application or direction, the CAA and such bodies representing airport operators or providers of air transport services (ie airlines) as the CC considers appropriate. In relation to the last category of persons, a list of potential candidates which have been proposed to the CC as potentially having an interest, depending on the case, is in [Annex B](#). The representative bodies the CC considers appropriate to notify in any particular case is likely to vary and will be notified to the CAA at the outset of the appeal.

20. This Guide places the rules in their statutory context and explains how, in practice, the CC expects to deal with several issues that could arise in relation to appeals that are not specifically dealt with in the Act or the rules.

Contact with the CC in advance of making an application to the CC

21. Where a person is considering making an application to the CC the CC would welcome that person giving early warning to both the CC and the CAA that they may do so. In such a case it would be particularly helpful if that person could advise the CC of the names of any advisers they expect to employ so that the CC can take steps to prepare for the possible appointment of members and allocation of staff to the case, including considering potential conflicts of interest.

Time frames

22. The deadlines prescribed by the Act are set out in [Annex A](#).
23. In particular, airport operators and providers of air transport services which are materially affected by the decision will have six weeks from publication of the CAA's decision under section 15 or section 22 of the Act to seek permission from the CC to appeal to it. The CC would have ten weeks from the date of the publication of the CAA's decision to decide whether to grant the applicant for leave to appeal. If it does, the CC would have to determine the appeal within 24 weeks (extendable by eight weeks) of the publication of the CAA's decision.
24. Interested parties also have the right to appeal the CAA's market power determination and operator determination to the CAT, within 60 days of publication of the CAA's reasons for its determination.¹³ The CC may extend the period for determining appeals to the CC by such period as it considers appropriate if there is a parallel appeal to the CAT which the CC considers may be relevant to the appeal to the CC and the appeal to the CAT has not been determined or withdrawn.¹⁴

Proceedings in parallel with an appeal to the CAT

25. Where an appeal against a market power determination or operator determination has been made to the CAT under section 13 of the Act at the same time as an appeal to the CC under section 24 or section 25 of the Act, the CC will have regard to the overriding objective in Rule 3 in deciding how to proceed. The CC may determine, after consulting with interested persons, either to:
 - (a) conduct its own appeal process alongside the appeal to the CAT;

¹³ See [Schedule 1](#) to the Act.

¹⁴ Section [28\(5\)](#) of the Act.

- (b) suspend its own appeal processes until the appeal to the CAT has been concluded;¹⁵ or
- (c) take such other steps as the CC deems to be appropriate in all the circumstances. The CC may, for example, decide to proceed with certain elements of the appeal process and suspend other elements of its appeal process until the outcome of the appeal to the CAT is known.

Permission stage

26. The Act requires that permission to appeal is obtained before an appeal can be brought.¹⁶ Applications for permission to appeal are made when applicants send their application in accordance with Rule 4, within six weeks beginning with the day on which the CAA published the relevant notice.¹⁷ Rule 4.2 specifies the information that must be sent to the CC. A copy of the application for permission to appeal must be sent to the CAA.¹⁸ Where the information sent to the CC includes sensitive information, a version with the sensitive information removed should be included. The CAA must publish the application for permission to appeal and send copies to the relevant parties in accordance with the Act.
27. The application should be set out in consecutively numbered paragraphs and be paginated. It should include cross-references to the relevant parts of the CAA's decision, the grounds of appeal etc. Unless notified otherwise by the CC, documents must be sent to the CC both by email and in hard copy (by first class post or delivered personally).
28. The CC has no power to extend the period of time within which an application for permission is to be made. The CC will, by prior arrangement, accept delivery of an application for permission at any time up to midnight on the last day in which it can be made. An applicant wishing to deliver documents to the CC outside normal office hours (after 6pm or before 8:30am) should liaise with the CC in advance to ensure delivery.
29. Although the CC may allow the filing of further submissions and evidence by issuing a direction under Rule 9, the CC will not allow this Rule to be used to circumvent the time limit by which an application for permission to appeal must be made.
30. The CC will need to make a determination on permission to appeal within a ten-week period, beginning with the day on which the CAA publishes the relevant notice.¹⁹
31. The CC will consider whether the applicant has standing to bring the appeal and the nature of any interests it claims to be materially affected. Under the Act, appeals can only be brought by a relevant licence holder or a provider of air transport services whose interests are materially affected by the decision.²⁰ The CC may refuse permission to appeal on one of the following grounds: the applicant does not have standing to bring an appeal; the appeal is brought for reasons that are trivial or vexatious; the appeal does not have a reasonable prospect of success; or in the case

¹⁵ See section 28(5) and (6) of the Act.

¹⁶ Sections 24(3) and 25(3) of the Act.

¹⁷ See paragraphs 1(1) & (2) of the Schedule.

¹⁸ See paragraph 1(3) of the Schedule. The Schedule requires the CAA to publish applications it receives and send them to specified persons at various stages in the appeal process (see, for example, paragraphs 1(4), 4(5) and 9(4) of the Schedule).

¹⁹ Paragraph 2(2) of the Schedule.

²⁰ Sections 24(2) and 25(2) of the Act.

of appeals under section 25 of the Act, the appeal relates entirely to a matter remitted to the CAA following an earlier appeal to the CC.²¹

32. Rule 4.2 requires that the applicant clearly set out why it considers that it has standing to appeal in its application. It is important that the CC has sufficient detail to be able quickly to establish whether an applicant has standing. Where an applicant is claiming to be materially affected by the decision it should clearly and concisely set out the interest that is affected and how it is affected.
33. The CAA has until the end of an eight-week period, beginning with the day on which the CAA publishes the relevant notice, to make submissions to the CC on whether the CC should grant permission to appeal.²² If the CAA wishes to make submissions on the application for permission to appeal, it should submit a response in accordance with paragraph 3 of the Schedule and Rule 4. The CAA must send a copy of any submissions it makes to:²³
 - (a) the holder of the licence which is the subject of the application;
 - (b) if the application is made by someone other than the holder of that licence, the applicant;
 - (c) any other person with a qualifying interest in the decision that is the subject of the application; and
 - (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
34. The CC may grant permission to appeal subject to conditions, which include conditions designed to expedite the consideration of the appeal, limit the matters to be considered on appeal and consolidate the appeal with other appeals.²⁴
35. The CC considers that the scope of the permission stage is intended to be limited. The basis for granting or refusing permission to appeal is set out in the Act and the time frame to determine permission to bring an appeal is strict.²⁵ The CC would therefore normally expect to deal with this stage based on the written evidence. However, Rules 4.6 and 4.7 do allow for a possible hearing and notice to be given of any hearing where the CC considers it necessary to hold one before a decision is taken on the application for permission.

Intervention in appeal

36. Where an application is made for permission to appeal, an application for permission to intervene may be made to the CC by those who would be entitled to appeal against the decision.²⁶
37. Applications for permission to intervene may be made before the end of the period of one week beginning with the day on which the CC publishes its decision to grant

²¹ Section 25(5) & (6) of the Act.

²² See paragraph 3(2) of the Schedule.

²³ Paragraph 3(3) of the Schedule.

²⁴ Paragraphs 2(3) and 2(4) of the Schedule.

²⁵ Paragraphs 1, 2 and 3 of the Schedule.

²⁶ Paragraph 4(1) of the Schedule.

permission to appeal against the decision.²⁷ An application to intervene may be made after that period only with the leave of the CC.²⁸

38. Applications for permission to intervene are made when applicants send their applications in accordance with Rule 5.3. At the same time as sending the application for permission to intervene to the CC, the applicant must send a copy of it to the CAA.²⁹
39. Subject to Rule 5 and those provisions contained within the Act, the CC expects that the procedure for intervention applications will depend upon the nature of the issues to be considered and the CC will set this out on a case-by-case basis.
40. The CAA will publish the application for permission to intervene and send copies to the relevant parties in accordance with the Act. Any such disclosure or publication is subject to the restrictions set out in the Act and the Rules and the considerations detailed below in paragraphs 75 to 78.
41. The CC may grant permission to intervene in an appeal only if satisfied that allowing the application to intervene is necessary or desirable for the proper resolution of the appeal.³⁰ In making an application to intervene, the applicant should therefore clearly set out why it believes its intervention is necessary or desirable for the resolution of the appeal. The CC would therefore normally expect to deal with this stage based on the written evidence. However, Rule 5.5 does allow for a hearing and notice to be given of any hearing where the CC considers it necessary to do so before a decision is taken on the application to intervene.

Suspension of the CAA's decision

42. Where an application is made for permission to appeal, an application may also be made under paragraphs 9 and 12 of the Schedule for a direction suspending the effect of the decision of the CAA being appealed by either the person who applied for permission to appeal or by another person who would be entitled to appeal against the decision.³¹
43. Applications for a direction suspending the CAA's decision are made when applicants send their application in accordance with Rule 6.2. An application to suspend the decision may be made at any time before the determination of the appeal.³² At the same time as sending the application to the CC, the applicant must send a copy of it to the CAA.³³
44. The CAA will publish the application for suspension and send copies to the relevant parties in accordance with the Act. Any such disclosure or publication is subject to the restrictions set out in the Act and the Rules and the considerations detailed below in paragraphs 75 to 78 below.
45. The Act allows the CC to suspend the CAA decision being appealed only if:
 - (a) the applicant would incur significant costs if the licence condition were to have effect from the date specified in the decision; and

²⁷ Paragraph 4(2) of the Schedule.

²⁸ Paragraph 4(3) of the Schedule.

²⁹ Paragraph 4(4) of the Schedule.

³⁰ Paragraph 5(2) of the Schedule.

³¹ Paragraph 9(1) of the Schedule.

³² Paragraphs 9(2) and 12(2) of the Schedule.

³³ Paragraphs 9(3) and 12(3) of the Schedule.

- (b) the balance of convenience does not otherwise require the licence condition to have effect from that date.³⁴
46. Rule 6 sets out the requirements for suspension applications and the process that the CC will follow in considering the application. Subject to Rule 6 and those provisions contained within the Act, the CC expects that the procedure for suspension applications will depend upon the nature of the issues to be considered and the CC will set this out on a case-by-case basis.
47. In making an application for a direction suspending the CAA's decision the applicant should clearly set out why it believes that it would incur significant costs if the decision were to have effect before the determination of the appeal and why the balance of convenience favours the suspension of the decision.
48. In circumstances where an early application for a direction suspending the CAA's decision is made,³⁵ if the CAA wishes to make representations regarding that application, it must do so in writing in the period of eight weeks beginning with the day on which the CAA published the relevant notice.³⁶
49. The CC will normally hold a hearing when considering an application for suspension of the CAA's decision.³⁷ It will decide whether to hold any such hearing depending on the nature of the application(s) and whether it appears to the CC that such a hearing is necessary. The CC would normally hold an oral hearing on an application for a direction to suspend the CAA's decision but not on an application for permission to appeal or intervene. The significance of a decision suspending the CAA's decision and the number of people that it may affect justify the presumption that a hearing will be held on an application to suspend a new or modified licence condition.

CAA representations where permission to appeal is granted

50. Where the CC has granted permission to appeal, the CAA may make submissions to the CC about its reasons for the decision in respect of which the appeal is being brought and/or any grounds of appeal on which that appeal is being brought against that decision. Rule 8.1(a) provides that, subject to any direction given by the Group under Rule 9.1, the CAA must make these representations before the end of the period of two weeks beginning with the day on which the CC publishes its decision to grant permission to appeal against the decision.
51. The CAA's submissions should contain a statement identifying the facts and reasons why it believes the appeal should not succeed and/or why it believes the relief sought should not be allowed and include any written evidence it wishes to adduce in support of its response. The CC would also expect the CAA to provide a non-confidential version of its submissions that is suitable for publication on the CC's website.

³⁴ Paragraphs 11(2) and 14(2) of the Schedule.

³⁵ These are cases to which paragraph 10 or 13 of the Schedule applies. In summary, an early application is one which is made under paragraph 9 or paragraph 12, before the end of the period of six weeks beginning with the day on which the CAA published notice of the decision to grant a licence or modify a licence condition and that decision would have effect but for this application, before the end of the period of ten weeks beginning with that day.

³⁶ Paragraph 16(2) of the Schedule.

³⁷ Rule 6.6.

CC approach to appeals

52. In conducting proceedings under the Act the CC will have regard to the overriding objective set out in Rule 3. The overriding objective of the Rules is to enable the CC to dispose of appeals fairly and efficiently within the time periods and in accordance with the principles prescribed by the Act. The CC expects participants to assist it to further the overriding objective.
53. The CC encourages participants to send all their evidence to the CC as early as possible in the process. The CC does not intend the provision of evidence by participants to be an iterative process. If the CC requires supplementary evidence later in the appeal, it will make this request.
54. The CC will seek to narrow the issues and points in dispute during the course of the appeal. It may, in particular, seek to do so at appeal management conferences and hearings.

Evidence and deadlines

55. The CC expects to set an administrative timetable designed to enable the CC and the parties to the appeal to conduct a satisfactory process within the statutory timescale. There are provisions in the Act to help facilitate this including the following:
- (a) The Act permits the CC to disregard certain matters raised by the CAA, the appellant or an intervener if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the statutory period.³⁸
 - (b) The Act also limits the circumstances in which the CC can consider matters, information or evidence that was not considered by the CAA at the time of making the decision that is the subject of the application or appeal (new matters).³⁹ These restrictions are summarised in paragraph 14 above.
 - (c) The Act requires the CC to make any permission to intervene for the purposes of supporting an appeal subject to conditions preventing the intervener from putting forward new grounds of appeal.⁴⁰
 - (d) Finally, where the CC or the CAA is required by the Schedule to the Act to publish something or send a copy of something and no time is specified, the CC and the CAA must publish or send it as soon as practicable.⁴¹

Administrative matters

56. The CC is an expert body which conducts its work by using groups of its members who are appointed on the basis of experience, ability and background.

³⁸ Paragraph 20 of the Schedule. However, the CC is not able to disregard matters:

(a) contained in representations made by the CAA in relation to an application for suspension or before the end of the period of 12 weeks beginning with the day on which the relevant CAA notice was published;

(b) raised by the appellant at the time of the application for permission to appeal or in an application for suspension; and

(c) raised by the interveners at the time of the application for permission to intervene or in an application for suspension.

³⁹ Paragraph 23 of the Schedule.

⁴⁰ Paragraph 23(3) of the Schedule.

⁴¹ Paragraph 34 of the Schedule.

57. An authorised member of the CC takes the decisions on: applications for permission to appeal; permission to intervene; suspension of condition of new licence or modification.⁴²
58. A Group of CC members is responsible for the consideration and determination of appeals, as well as for giving effect to its determination of appeals.⁴³ CC members are appointed on the basis of experience, ability and background.
59. The Group will be supported by a staff team led by an Appeal Director. Participants in the reference will have a contact in the staff team who will take enquiries and act as the main point of contact for the appeal. Once an appeal is made to the CC, the CC will publish the necessary contact details on a designated page on the CC's website.

Administrative timetable

60. The CC must determine the appeal within 24 weeks beginning with the day on which the CAA publishes the relevant notice.⁴⁴ As soon as practicable after granting permission to appeal and determining any applications to intervene the CC will draw up an administrative timetable for the appeal in accordance with Rule 7 and the Act. When drawing up the timetable the CC will have regard to any views of the parties to the appeal as well as the overriding objective set out in Rule 3. Once the administrative timetable has been set, the CC will aim to keep to it; parties to the appeal should therefore check their availability on the notified dates at an early stage. The CC will not normally consider that the unavailability of advisers or of legal representatives is a reason to depart from these dates.
61. In order to conduct an efficient process, the CC expects that parties to the appeal will treat the timetable as 'hard' deadlines. Should it become apparent to a participant that it will struggle to adhere to a deadline the CC should be contacted as soon as possible.
62. Rule 7.5 provides that if the CC has reason to believe that the administrative timetable will not be met for any reason the CC may revise it. Examples of when this might be necessary include where an application to intervene or to suspend the decision is made after the administrative timetable is published and administrative deadlines may need to be included for receiving submissions on these applications and the making of the CC's decision on them.
63. Depending on the appeal timetable, the CC may issue any provisional determinations and seek views before making a final determination.

Appeal management

64. All appeals will be subject to active appeal management by the CC. The CC does not require parties to the appeal to be legally represented at any appeal management conferences and hearings. The CC does, however, want focused arguments from the participants at any conferences.

⁴² The authorised member of the CC may be (a) the CC Chairman; (b) a member of the CC authorised by the Chairman to exercise that power; or (c) a member of any group which has, or (if permission to appeal is granted) will have, the function of determining an appeal against the decision (paragraph 35(1) of the Schedule).

⁴³ Schedule 2, paragraphs 17 and 18.

⁴⁴ The 'relevant notice' is defined in paragraph 1(2) of the Schedule to mean (a) in the case of an application for permission to appeal under section 24, the notice published in accordance with section 15 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 that is the subject of the application.

Procedure and directions

65. Where necessary the CC may issue directions in relation to the conduct of the appeal under Rule 9. Parties to the appeal may apply for directions or the CC may propose that a direction appears necessary in the circumstances. The CC will usually give parties to the appeal an opportunity to comment ahead of issuing a direction. Depending on the circumstances, applications for directions may be dealt with in writing or at an appeal management conference.
66. Where parties to the appeal are applying for directions the CC expects that they will seek to agree the direction with the other parties in the appeal.
67. Rule 9.2 sets out a non-exhaustive list of matters upon which the CC can give directions. Parties to the appeal should be aware that the CC will have regard to the overriding objective in managing the conduct of the appeal.

Consolidation of appeals

68. The Act provides that the CC may grant permission to bring an appeal subject to conditions which may include conditions requiring that the appeal be considered together with other appeals.⁴⁵ The Rules include provision for directions being made by the CC relating to consolidation of appeals.
69. Individual applicants and the CAA will be given the opportunity to make submissions before the CC makes any decision to consolidate their appeals.

Hearings

70. Hearings will usually be held with only one or more of the parties to the appeal present. However, the Group may also decide to hold hearings that are open to the public. In considering who should be able to attend particular hearings, the CC will, in particular, have regard to the importance of respecting sensitive information.
71. Where the CC decides to hold a hearing on the substance of the appeal, the date of the hearing will normally be stated in the administrative timetable, which will be published on the CC's website.
72. Parties to the appeal will normally be directed as to the matters on which the CC wishes to hear submissions and the length of time they will be allowed to make submissions, before the hearing. The CC will indicate the order in which it wishes to hear the parties to the appeal. The CC expects that parties to the appeal will normally be represented by one spokesperson or advocate only at each hearing. However, subject to prior agreement with the CC, they may be represented by more than one person and the CC will be sympathetic to such arrangements to facilitate the clear presentation of technical issues.
73. Verbatim transcripts will be taken of hearings. Transcripts will be sent to the relevant party after the hearing for checking and the identification of sensitive information.

⁴⁵ Paragraph 2(3) and (4) of the Schedule.

Staff meetings

74. The CC may conduct meetings or make phone calls to clarify specific facts; for example, CC staff may hold meetings with the CAA or other parties to the appeal to discuss technical issues. A transcript will not normally be taken but where practical other parties to the appeal may be invited to send observers.

Confidentiality

75. The CC and the CAA may exclude from publication or disclosure required under the Act or the Rules any information which they are satisfied is:⁴⁶
- (a) commercial information, the disclosure of which would or might, in the CC'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 CC's opinion, significantly harm the individual's interests.
76. Such information is defined in Rule 2.1 as 'sensitive information' and provision for its protection is included in Rules 4.2, 5.3 and 6.2. Parties' attention is also drawn to Schedule 6 of the Act which contains general restrictions on the disclosure of certain information obtained under or by virtue of the provisions of the relevant Parts of the Acts which relate to the affairs of any individual or to any particular business. Schedule 6 makes certain exceptions to those restrictions, including provision permitting disclosures made with consent of the individual or the person for the time being carrying on the business (paragraph 2) or made for the purpose of facilitating the performance of the functions of the CC, CAA or other specified persons (paragraphs 4(1) and 4(2)).
77. Rule 9.2 sets out a non-exhaustive list of matters upon which the CC can give directions. Under this rule the CC can give directions about the handling of sensitive information. If a party has concerns about providing sensitive information to other parties to the appeal, it can provide the proposed version of the document to the CC and ask it to provide directions on the proposed excisions. The CC respects the importance of protecting sensitive information. However, it also discourages participants from making excessive or blanket confidentiality claims over submissions and may consider them to be inconsistent with the overriding objective.
78. Where the CC accepts that information is sensitive information the CC may nevertheless need to provide the information to other persons for fair process reasons. In such cases, it may require the disclosure of the information to other persons on restricted terms, for example within a 'confidentiality ring' comprising the participants' named legal representatives and, possibly, other external advisers or experts such as accountants and economists, subject to appropriate confidentiality undertakings.

Costs

79. The CC must make an order requiring the payment of its own costs incurred in connection with the appeal.⁴⁷ The costs of the CC for this purpose will include all its costs, including the costs of the members and staff allocated to the matter as well as its overheads and any external costs it may incur, for example, obtaining the

⁴⁶ Sections 29(5) and 59 of the Act.

⁴⁷ Paragraph 32(2) of the Schedule.

assistance of external Counsel. Where the appeal is allowed in full, the CC must require those costs to be paid by the CAA; where the appeal is dismissed in full, by the appellant; and where it is allowed in part, by the CAA or appellant in such proportions between them as the CC considers appropriate.⁴⁸ Where there is an intervener, a proportion of the costs may be allocated to them as the CC considers appropriate.⁴⁹

80. The CC has discretion to make an order requiring a party to the appeal⁵⁰ to make payments to another party in respect of costs reasonably incurred by the other party in connection with the appeal.⁵¹ Factors influencing the CC's decision could include the conduct of the parties, a party's degree of success, and the proportionality of the costs claimed having regard to the matters in issue.
81. The inter partes costs potentially recoverable under such an order are not specified in the rules. They could include all the fees, charges, disbursements, expenses and remuneration incurred by a party in the preparation and conduct of the appeal. However, the CC expects it will not normally allow any amount in respect of costs incurred before the CAA first published its decision that is the subject of the appeal.
82. The CC could make its order for costs at the time that it gives its determination. However, the CC expects that it will normally reserve its position on costs and make a subsequent written order.
83. The rules do not specify the process that will need to be followed to make claims for costs. However, the CC expects that any person seeking an award of costs in its favour should file a statement of costs with the CC at the same time as also disclosing it to any person who may become liable to pay those costs, to give them the opportunity to comment on the costs claimed to the CC. Each statement of costs should include detailed information about the costs (including categories such as solicitors' costs, Counsel fees, experts' costs and any other disbursements) reasonably incurred by the party to the appeal in connection with the appeal. The CC will normally expect the amounts for each category of costs to be broken down by reference to the number of hours claimed, hourly rate, position of the fee earner and the nature of the work performed.
84. Each statement of costs should be signed by the party to the appeal or where applicable its legal representative.

⁴⁸ Paragraph 32(3) of the Schedule.

⁴⁹ Paragraph 32(4) of the Schedule.

⁵⁰ Paragraph 32(8) of the Schedule provides that for the purposes of paragraph 32 (Costs), references to a party to an appeal include a person who was granted permission to intervene in the appeal and subsequently withdrew from the appeal.

⁵¹ Paragraph 32(5) of the Schedule.

Statutory deadlines under the Act

<i>Stage</i>	<i>Time frame prescribed by the Act</i>
CAA publishes notice under section 15 or section 22	Not specified
Applicant sends application for permission to appeal	Six weeks beginning with the day on which the CAA published its notice
Applicant makes early application for suspension of condition of new licence or modification	Six weeks beginning with the day on which the CAA published notice of its decision to grant the licence or modify a licence condition
CAA makes any representations on the application for permission to appeal	Eight weeks beginning with the day on which the CAA published its notice
CAA makes any representations on the application for suspension of condition of new licence or modification	Eight weeks beginning with the day on which the CAA published notice of its decision to grant the licence or modify a licence condition
CC publishes its decision on the application for permission to appeal and its reasons	Ten weeks beginning with the day on which the CAA published its notice
If applicable, the CC publishes its decision on the early application for suspension of condition of new licence or modification	Ten weeks beginning with the day on which the CAA published notice of its decision to grant the licence or modify a licence condition
Applicants send application for permission to intervene in the appeal	One week beginning with the day on which the CC publishes its decision to grant permission to appeal ¹
CC publishes its decision on any applications for permission to intervene and its reasons	Not specified ²
CC determines the appeal	24 weeks beginning with the day on which the CAA publishes its notice
CC determines the appeal (extension—if required)	32 weeks beginning with the day on which the CAA publishes its notice

¹ An application for permission to intervene may be made after the end of that period only with the leave of the CC (paragraph 4(3) of the Schedule).

² In accordance with paragraph 34 of the Schedule, where the CC is required by the Schedule to publish something or send a copy of something and no time is specified, the CC must publish or send it as soon as practicable.

List of possible representative bodies

Bodies representing airport operators

- (a) *Airport Operators Association (AOA)*: represents UK airport operators (50+ members).
- (b) *Airports Council International (ACI)*: represents airport operators worldwide (440+ members in Europe).

Bodies representing providers of air transport services

- (c) *International Air Transport Association (IATA)*: represents scheduled airlines worldwide (242 members).
- (d) *International Air Carrier Association (IACA)*: represents mainly non-scheduled airlines worldwide (30 members).
- (e) *European Low Fares Airline Association (ELFAA)*: represents European low-cost carriers (10 members).
- (f) *European Regions Airline Association (ERA)*: represents European regional airlines (50 members).
- (g) *British Air Transport Association (BATA)*: represents UK scheduled and charter airlines (11 members).
- (h) *Board of Airline Representatives in the UK (BARUK)*: represents scheduled airlines operating at UK airports (80 members).
- (i) *Airline Consultative Committee (ACC)*: represents airlines operating at the airport (primarily dealing with commercial matters).
- (j) *Airline Operators Committee (AOC)*: represents airlines operating at the airport (primarily dealing with operational matters).



