



Department
for Transport

Post Implementation Review of the Airport Charges Regulations 2011

Moving Britain Ahead

December 2017



Post Implementation Review of the Airport Charges Regulations 2011

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

December 2017



© Crown copyright 2017

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

ISBN 978-1-5286-0135-1

CCS1117504442 12/17

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Airport Charges Regulations PIR

Title: Airport Charges Regulations 2011 PIR No: DfTPIR006 Lead department or agency: Department for Transport Other departments or agencies: Civil Aviation Authority Contact for enquiries: Shafiq Pandor Shafiq.Pandor@dft.gsi.gov.uk	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Secondary legislation
	Type of review: Statutory - other
	Date of implementation: 10/11/2011
	Date review due (if applicable): 10/11/2016
Summary: Intervention and Review	RPC Opinion: GREEN

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

Some airports in the European Union have a dominant position in regional and national markets, and are not subject to effective competition from other airports. The absence of effective competition may result in these airports charging higher prices, undertaking insufficient investment or providing a low quality of service. In addition to this, it may also mean that airport operators, particularly those that own multiple airports or those which are public bodies may undertake discriminatory charging to favour particular airlines e.g. the flag carrier, or airlines that also use other airports in their network.

A variety of differing ownership and regulatory structures have evolved across the European Union to address this problem. In addition, airport charges are subject to international regulation by the International Civil Aviation Organisation (ICAO). However, the European Commission concluded that these differing national regulatory systems are not always effective and that a common EU regulatory framework would improve on existing outcomes in some national markets.

Therefore, the European Commission introduced the European Directive 2009/12/EC, commonly known as the Airport Charges Directive (the 'Directive') to set up this common EU framework. The UK transposed this via the Airport Charges Regulations, using a 'copy-out' approach wherever possible to ensure consistency with government policy.

The policy objective of the regulations and Directive was to apply a common framework to airports with over 5 million passengers per annum (mppa), regulating the essential features of airport charges and the way they were set. The regulations nominated the Civil Aviation Authority (CAA) as the independent supervisory authority to ensure correct implementation of the regulations. In 2011, nine airports needed to comply with these regulations due to them having over 5mppa in 2009, rising to ten airports in 2012 and falling again to nine in 2016. At the time of

implementation, three of these airports (Heathrow, Gatwick and Stansted) were subject to economic regulation¹ though Stansted has since been deregulated.

In addition to this, the Directive:

- Introduces common principles of transparency and consultation for airports in determining the charges levied on airlines;
- Stipulates that airport charges should be non-discriminatory;
- Allows differentiated charges based on relevant, objective, transparent and non-discriminatory criteria;
- Requires member states to appoint an independent supervisory authority to ensure the correct application of the Directive; and
- Sets up mechanisms for resolving disputes about the level of airport charges, unless satisfactory procedures already exist under national law to assess whether airports are subject to effective competition.

The Directive was intended to reduce discriminatory practices by airport operators, leading to more competitive and efficient airport charges across the EU, as well as a standardised quality of service at regulated airports across the EU, and increased transparency of airport charges and quality between airports.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

These objectives and intended effects were expected to be fully met by the review date.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

The level of resource used to collect evidence was low, as the initial impact assessment of the regulations estimated costs to be less than £1 million per year. Moreover, the regulations introduced by the Directive are not thought to be risky or contentious, as the majority of UK airports have had similar processes in place since before the implementation of the regulations. As a result, the regulations are not particularly novel or untested.

Although the level of evidence sought has been deemed to be low, there exists a large amount of evidence in the CAA's annual reports on the implementation of the regulations, which was collected and published by the CAA in their capacity as the independent supervisory authority. Additionally, a stakeholder questionnaire was sent out to airports within scope of the Directive, as well as those airports just outside of scope (i.e. airports with just under 5mppa). A stakeholder questionnaire was also sent out to all UK airlines.

As the Directive was expected to have a small impact on UK business, it was not deemed proportionate to undertake a high level of evidence gathering, especially as the evidence sought was considered sufficient to answer the research questions set out in the evidence base.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

What forms of monitoring data were collected?

¹ The CAA assesses whether airports have substantial market power and, where appropriate, licence those that do. The licence impose conditions relating to prices, service quality and operational resilience, amongst others.

The CAA, which is the independent supervisory authority for the regulation, conducts annual reviews of the policy. Under the Directive, the CAA has the role of reviewing and determining upon the request of an interested party whether an airport is subject to effective competition. The Directive also gives the CAA powers to ensure correct implementation of the Directive and to resolve disputes. Data has been collected from the CAA concerning the number of reviews undertaken. Data was also collected on passenger numbers, to identify which airports the Directive has applied to over time, in addition to selecting airports that are likely to be subject to the Regulations in the near future.

What evaluation approaches were used? (e.g. impact, process, economic)

A very light-touch impact evaluation was used to attempt to identify any changes due to the Directive. To assess the efficacy of the Directive, evidence was sought to identify how the Directive has performed against its objectives, primarily using evidence from stakeholder engagement.

How have stakeholder views been collected?

Stakeholder views were collected through a consultation of 9 airports affected by the regulation (of which 9 responded) as well as 3 airports (of which 1 responded) just below the 5mppa threshold. We also collected the views of 8UK airlines as the beneficiaries of the airport charges regulations (of which 2 responded).

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

The objective of the Directive was to establish a common framework regulating the essential features of airport charges and the way they are set, applying to the busiest airport in every EU country and all airports with more than 5 million annual passengers. This was due to the variety in airport charging systems across the EU reflecting differences in ownership, structure, conduct and regulation of the industry, which may have led to a less than optimal outcome for airport users. For example, the absence of effective airport competition may have been compounded by common ownership of airports by a single organisation, or by public bodies, which may not have wholly commercial objectives. Within the UK, the requirements of this framework have been met, primarily due to the fact that similar procedures existed in the UK before the implementation of the Directive², as many consultation responses suggested. This was largely due to pre-existing ICAO guidelines on non-discrimination and consultation.

The CAA has the function to investigate whether an airport operator is failing, or has failed to comply with an obligation under the Airport Charges Regulations. The CAA has not yet received any complaints that an airport operator has not complied with an obligation under the Regulations, nor have they investigated whether an airport operator was failing to comply with an obligation under the regulations.

A common framework is in place and in use in the UK, where there have been no complaints of discrimination³, there has been effective consultation, there is transparency of charges, airports and their users can negotiate to agree on levels of service, and there is differentiation of

² CAA Emerging Thinking on ACD implementation <http://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294972629>

³ CAA airport charges regulations Annual Reports

services.⁴ There is also an independent supervisory authority, which can examine on request whether an airport is subject to effective competition.

No UK airports or airlines explicitly stated that the Directive had placed them at a competitive disadvantage. However, it was noted by one airport that the threshold for applicability of the Directive was set too low. They noted, *"We are a relatively small regional airport (circa 7.5m ppa, turnover less than £100m pa). All our airline customers are larger – many are multi-billion sterling/euro turnover businesses. Our customers have multiple options when it comes to deciding where to allocate aircraft, and which routes to operate – hence we have virtually no ability to set our own charges. The determinant of what an airline will pay is market-driven, with the airline's relative bargaining power being a predominant factor."*

According to a report by Steer Davies Gleave⁵ for the European Commission, since the introduction of the rules in 2011 following a 2009 Directive, larger European airports have become more transparent when taking decisions about these charges. In general, consultations between airports and airlines, as required by the Directive, are now being carried out and Member States' independent supervisory authorities have been set up.

However, there is mixed evidence on the success of the implementation of the Directive in other EU countries. The European Commission identified that further monitoring of the application of the Directive is needed, noting that several infringement procedures have been initiated.⁶ One airport operator stated, *"We believe the Directive is poorly or inconsistently implemented across the EU countries, potentially placing airports in countries with more robust regimes at a relative disadvantage. For example the intent of many of the transparency objectives can be circumvented by airport groups."*

Moreover, there have been a number of cases where countries have failed to implement the Directive correctly. In 2012, the European Commission referred Poland to the European Court of Justice for failure to implement the Airport Charges Directive⁷. In addition to this, Belgium⁸, Greece⁹ and Italy have also been asked by the European commission to correctly implement the Airport Charges Directive.

Engagement with airports and airlines therefore has not identified any significant unintended effects of the Directive. Discussions with two airports under the 5m ppa threshold has also concluded that the Directive had no material impact on how they conducted themselves with respect to charges, with the exception of planning for complying with the Directive.

The objectives of the Directive appear to have been met with no overall unintended effects. While there are no major issues identified in the UK, the same has not been true across all EU member states. Across the EU, there is evidence detailed in paragraphs 11-15 of the evidence base, that implementation of the Directive has not been consistent across Member States. However, by and large, there has been increased transparency at large airports within the EU.

⁴ <http://ec.europa.eu/transport/modes/air/studies/doc/airports/2013-09-evaluation-of-directive-2009-12-ec-on-airport-charges.pdf>

⁵ <http://ec.europa.eu/transport/modes/air/studies/doc/airports/2013-09-evaluation-of-directive-2009-12-ec-on-airport-charges.pdf>

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0278&from=EN>

⁷ European Commission, Press Release, 24 October 2012, http://europa.eu/rapid/press-release_IP-12-1143_en.htm

⁸ European Commission, Press Release, 25 February 2016, http://europa.eu/rapid/press-release_MEMO-16-319_en.htm

⁹ European Commission, Press Release, 28 May 2015, http://europa.eu/rapid/press-release_MEMO-15-5053_en.htm?locale=en

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

The original IA¹⁰ assumed that the average annual cost of the regulation would be £152,000, in addition to a transition cost of £240,000.

There are four key elements of this average annual cost:

1. The Independent Supervisory Authority investigating upon request of an airline or an airport operator, whether an airport is subject to efficient competition.
2. Developing Guidance on procedures and policies to work with industry to help assure compliance
3. Monitoring industry to ensure correct compliance with the Directive and publishing annual reports.
4. Airports consulting with airlines.

The most significantly affected parties here are the CAA, airports and airlines. However, the CAA operates most of its services on a cost-recovery basis, and would recover its costs via charges on airports and airlines. The additional cost of mandatory consultation presents both a financial cost for airports and airlines, as well as an opportunity cost, which is larger for small airlines, which are likely to have less resource to engage in this.

Through our data gathering, it was not possible to identify the true cost of the Directive. The IA assumed that between 3 and 15 reviews would have taken place over the first 10 years, however, no reviews have yet been undertaken. The initial IA estimated transition costs of £100,000 a year for the first three years, however only one airport estimated a transition cost in the first year of around £20,000, which covered advice and guidance on how to interpret the Regulations.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

Airports operators typically do not collect cost data for implementing the Airport Charges Directive and so it was not possible to estimate the true cost of the regulation. Stakeholder engagement was the only way to identify the costs of the regulation.

None of the 9 airport operators that responded to the consultation recorded separate data for the costs of the Directive. However, the majority of stakeholders noted that there is no material directly attributable cost, as resource is allocated amongst existing staff. However, it was noted that there is still an opportunity cost, and there is reduced resource to focus on other, more value-adding activities. One airport operator reported incurring legal costs of around £20,000 when the regulations were enacted in the UK. These costs were mainly for advice and guidance on how to interpret the Directive.

Consultation responses have also unveiled some notion of increased administrative burden on airport operators, with 4 out of 9 airport operators reporting an increase in administrative burden and cost as a result of the Directive. However, none of this was identified to be significant. In general, consultation responses highlighted the fact that the Directive provided a framework for pre-existing consultation processes, and therefore has made no significant differences to these processes.

One airport noted that, *“The steps which now have to be taken appear to have very limited value. None of our airline customers engages with the consultation process, as the vast majority*

¹⁰ <http://www.legislation.gov.uk/uksi/2011/2491/impacts>

have bilateral deals.” Another noted that, “A layer of formal consultation has been introduced which duplicates or conflicts with our individual commercial negotiation with our current airport users.” Two airlines responded to the consultation, with one noting that, “compliance to the Directive increases processes which become more and more of a challenge to smaller airlines which have less resources.”

The original IA assumed that a significant proportion of the cost to business would have been to the CAA, however, they were not able to provide any specific cost information for the CAA of implementing the directive. Furthermore, they have not yet needed to conduct any reviews as a result of the Directive, so it is not possible to specify any costs here.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

Due to the nature of the regulations, only a small number of airports were affected, 9 in total. This means that the sample size we have used to source primary data is very small. Moreover, many UK airports covered by the regulations have had similar procedures in place prior to the introduction of the regulations, so there is no real counterfactual in the UK context. This means that for the UK, it becomes very difficult to fully understand the efficacy of the Directive and its implementation in isolation.

7. Lessons for future Impact Assessments

This PIR found that transition costs were overestimated at the IA stage. Transition costs were estimated to be £100,000 per year in the first three years, however one airport reported only a one-off cost of £20,000. There are some lessons to be learned here around engaging more with stakeholders to establish more robust estimates of transition costs.

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

This PIR found that the Directive and implementing regulations are working well in the UK and its objectives have been met. It is proposed that the regulations are retained as is. However, for the benefits of the Directive to be truly realised, it must be implemented correctly in all EU member states.

The majority of consultation responses favoured retaining the regulations as is, but there are few points to note:

- One airline noted that the Directive has taken a relatively balanced approach between airport operators and airport users.
- One airport with around 7.5 mppa views the threshold for applicability as too low. Airports of 5m/6m/7mppa have virtually no negotiating power with airlines. In their view, a minimum threshold of 10 mppa (or higher) would be logical and appropriate. It believes that there is a fundamental misunderstanding of how airport/airline relationships work, and a failure to properly understand the market as it relates to negotiations between the parties.
- Two airports noted that they received little engagement from their consultation process, and therefore saw little value in the consultation process required. However, other

airports raised no issues with the consultation process One airline considered that it applied pressure on airports to consult more robustly with airlines.

- One airline noted they would like to see more stringent regulation, “*which could impose processes and ensure that airlines as well as airports get all the information they need when required to participate in consultations.*” They also noted that for other EU countries, language can also create a barrier as they don’t always get documentation translated in English, which would help their participation.

Sign-off for Post Implementation Review:

1 *I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.*

2 Signed: Baroness Sugg

Date: 10/11/2017

A handwritten signature in black ink, appearing to read 'L. Sugg', is placed over a light grey rectangular background.

CCS1117504442

978-1-5286-0135-1