



From the Secretary of State

[To informal consultation respondents]

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**Removing mandatory references to the
Competition Commission**

16th May 2012

As you may have seen, I have announced today that I intend to make directions under section 40(9) of the Airports Act 1986 to the Civil Aviation Authority (CAA) to not make references to the Competition Commission in respect of mandatory airport charges conditions for Heathrow, Gatwick and Stansted airports. Each decision has been considered separately for the designated airports.

My decisions follow an informal consultation between 19th January and the 29th February 2012 with industry on whether the references to the Competition Commission should remain in place for the next regulatory period (beginning 1st April 2014). The Civil Aviation Bill, if enacted, would remove these references permanently but under the current Act, the timetable for the next five yearly price control would otherwise require the CAA to begin work on preparing the references now.

As you will know, the Civil Aviation Bill is proposing to replace the Competition Commission reference with a licensing and appeals regime which would enable proportionate and responsive regulation. This also means that the process for making public interest conditions under the current Act would be replaced by the determination of service quality licence conditions by the CAA. Crucially, the Competition Commission role would be strengthened to act as an appeal body against CAA's decisions about licence conditions rather than as an advisory body to the CAA. Under the new regime, appeals about licence conditions could be brought by the licence holder or an airline whose interests are materially affected by the decision.

Respondents to the informal consultation raised a number of points both for and against the proposal to remove the mandatory references. I intend to publish the responses to the consultation on the Department for Transport website by the end of the month unless you indicate otherwise to my officials.

Following careful consideration, I believe there is a compelling case for removing the reference for each designated airport as soon as possible.

Most concerns from the informal consultation centre on the uncertainty of the Bill progressing through Parliament. I am confident that the Bill, which has already completed a significant part of its Parliamentary passage, will continue its successful passage through the House of Lords so that it will be enacted in time to be implemented for the next regulatory settlement. The Bill was introduced in January, and in just under five months, will start its passage in the House of Lords. In light of this, it would be unrealistic to ignore that a new regime is on the horizon which will form the basis for the next regulatory settlement due to come into effect on 1 April 2014.

The CAA has also advised in its letter dated 12 April 2012, which can be found on its website, that it would not be practical or realistic to twin track preparations for the current and the impending regime which means significantly deferring my decision would result in extra burdens. Removing the references now would remove those unnecessary burdens as well as significantly reduce uncertainty from the process for the CAA, the Competition Commission and the aviation industry. This approach is in line with the Government's objective to remove unnecessary regulatory burdens particularly in difficult financial times.

Some respondents' proposed that the Competition Commission and the CAA commit to a voluntary appeals procedure should the Bill not be enacted in time for the next regulatory settlement in 2014. I do not think this is necessary given the significant progress of the Bill through Parliament and in any event it is unworkable as it would be beyond the CAA and the Competition Commissions legal powers to enter into such an agreement.

Other respondents' provided support for the proposal subject to the drafting of the new appeals regime in the Civil Aviation Bill remaining unchanged. The drafting of any part of the Bill may be changed by Parliament, however there have been no amendments made to the appeals regime in the Bill so far.

I also do not believe that a feasible alternative to removing the automatic references would be to make the references for the next regulatory settlement and introduce the new regime at the next five yearly point. This would not achieve my objective for the Bill which is to put passengers at the heart of the regulatory regime as soon as possible¹.

¹ The primary duty will also put users of cargo at the heart of the new regime.

I have published this letter on the Department for Transport's website alongside the letter I have issued to the CAA to direct them to not make these references.

Finally, I wanted to thank you for responding to the consultation and providing evidence for my consideration to inform the decisions.

Yours sincerely

[Signed]

JUSTINE GREENING