

Access to the ground handling market at UK airports: a review of the CAA's approach

Request for information

CAP 1409



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Chapter 1

Executive Summary

1.1 Ground handling services are subject to the Airports (Groundhandling) Regulations 1997 ("the Regulations") that implemented the EU directive of 1996 on ground handling ("the Directive"). The Regulations give the CAA a number of decision-making functions which affect access to the ground handling market at airports and consequently the supply of handling services.

- Applications from airports to limit access to the ground handling market by third party suppliers and self-handling airport users (and in some cases the identity of permitted handlers).
- Appeals from interested parties in relation to: (i) the allocation of space at airports for the carrying out of ground handling activities, (ii) the charges levied for access to airport facilities that are necessary for those activities, (iii) the conduct of regular consultation by airports with airport users and ground handlers on the organisation of the provision of ground handling services at the airport.
- Applications from airports to reserve to themselves the management of centralised airport infrastructures used for ground handling.
- Applications from airports to prohibit handlers that do not comply with airports' local rules imposed by them to ensure the proper functioning of the airport.
- Appointment of an Independent Examiner to check that an entity providing both ground handling services and other services maintains separate accounts for its different activities.

- 1.2 More detail on these functions is set out in this document. We have also published on our website some background information about the CAA's regulatory role in ground handling.¹
- 1.3 It is now 20 years since the Directive was passed and over 15 years since we have been asked to limit the number of ground handling suppliers at any UK airport. In the last five years or so, however, we have considered two appeals about ground handling access charges at one airport.
- 1.4 The purpose of this document is to seek views and relevant factual information from those with an interest in the provision of ground handling services at UK airports, in particular airports, airport users ground handling suppliers, and those representing passengers and shippers of cargo.
- 1.5 This document is not a draft policy statement for consultation but an evidence gathering exercise. In due course we plan to publish for consultation draft guidance on the CAA's role under the Regulations which will draw on the views and information provided in this request for information.
- 1.6 We are looking for facts, examples and information and stakeholders' views on the factors we should take into account, and how we should assess them in different circumstances, when carrying out our functions described in this document.
- 1.7 We are not, in this document, inviting specific complaints or representations about the supply of ground handling services at individual airports. Most complaints, in particular those alleging a failure to comply with the requirements of the Regulations on market access, would need to be addressed to airports and thereafter can only be pursued through the courts rather than with the CAA.
- 1.8 However, we are aware that some stakeholders have concerns about the impact on them of current ground handling practices at some UK airports.

¹ <http://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Airports-Groundhandling-Regulations-1997>

For example, we acknowledged in our In Focus publication on 24 February 2016 that some aircraft operators were apparently being refused the ability to provide handling services for their own flights and that the airports concerned had not applied to the CAA for authority to do so². In that publication we encouraged airports to move into compliance with the freedoms and aims of the Regulations but highlighted that we wanted to see all stakeholders giving full consideration to the security and safety implications as they do so.

- 1.9 The document also explores the purpose behind the EU Directive (implemented by the UK Regulations), namely to increase competition and choice in the supply of ground handling services with the aim of "*reducing the operating costs of the airlines and improving the quality of service provided to airport users*"³. An area we are seeking views is around the extent which the CAA, using its functions under these Regulations, should accept constraints to competition in the interests of safety, security or for any other reasons. This is important since the CAA is also responsible for enforcing the UK's and EU's safety and security regulations at UK airports. We also see groundhandling as an essential component of the resilience of the airport with respect to reliability and dealing with extreme circumstances.

Security

- 1.10 The CAA is responsible for monitoring airports' and airlines' implementation of aviation security regulation in the UK; and these entities may, in turn, employ ground handling providers. All ground handling providers (whether self handlers or third-party handlers), and no matter how many operate at an airport, must comply with security regulations through their contractual arrangements with airlines.
- 1.11 The environment at UK airports has changed significantly since aviation security regulations were first implemented in the 1980s, as new or revised measures have been introduced to further mitigate the threat from

² <http://www.caa.co.uk/CAP1358>

³ Recital 5 to the Directive.

terrorism. Ground handling is an essential part of the operations flow at an airport and in itself must contribute to the overall integrity of an airport's security, particularly as the majority of ground handling activities are carried out in security restricted areas.

Safety

- 1.12 With regard to safety, we are aware that ground handling activities, especially airside at airports, have a high potential to influence the safety outcomes of the day to day operation of an airport. Currently the CAA has no direct regulatory oversight responsibilities for safety of functions carried out by ground handling service providers. However we indirectly regulate this as we oversee the way that airlines manage the safety of ground operations including those services contracted to ground handlers.
- 1.13 A CAA review of ground handling safety is currently under way to determine whether any regulatory intervention is required (for example setting minimum standards and/or to require minimum competence via a licensing scheme) and to inform discussions with the European Aviation Safety Agency ahead of planned safety regulation of the sector at an EU level.
- 1.14 Stakeholders may already have participated in conversations with the CAA on the factors they consider influence the safety of ground handling operations and therefore the impact of ground handling on safety. We would nevertheless be grateful to receive a response to this Request for Information from those stakeholders as well. The CAA's conclusions in the safety review work will influence the way in which the CAA will carry out those aspects of our role under the Regulations where it is necessary to consider whether it is appropriate to limit competition in handling on grounds of safety.

Resilience

- 1.15 Ground handling is an essential component of the operation of the airport and one of the determinants of reliability and resilience to extreme events. Ground handling issues have, for example, been a cause of delay in

recent summers at some airports and there are some considerations around limiting when airlines can switch ground handlers (i.e. to avoid switching at busy times). We are intending to put out a call for evidence on the wider question of airport resilience in June 2016. This exercise will also take account of any relevant points made in response to this information request. We invite stakeholders to highlight issues that are particularly relevant to the question of resilience in their responses to this document.

Responses to this document

- 1.16 We are inviting responses to this document by 28 June 2016. They should be sent preferably by email to economicregulation@caa.co.uk or by post to:

Rod Gander
Consumers and Markets Group
Civil Aviation Authority
CAA House
45-59 Kingsway

Further details can be found in Chapter 13 including how we will handle any confidential information we might receive.

- 1.17 Where stakeholders need further information on the safety and security requirements for ground handlers, which are not included in this document, please contact us using the details above.

Chapter 2

Introduction and background

Summary of ground handling activities

2.1 Ground handling is a term that describes collectively the wide range of services and facilities provided on the ground at airports for aircraft, for aircrew, for passengers and their baggage, and for cargo, all of which support the operation of air services.⁴ These include highly technical services such as aircraft maintenance, fuel and oil services and freight handling as well as services for passengers including passenger check-in, supplying on-board catering provisions, baggage handling and surface transport at the airport. Some services are provided in landside areas of an airport (for example, within the terminal before security screening) while others are conducted airside. Many handling services, particularly those provided airside, are an integral part of an airport's security system.

2.2 Ground handling services can be supplied either as a package of services (typically loading, marshalling, pushback, passenger handling) or individually (typically fuel, catering) and by a variety of suppliers:

- by specialist ground handling suppliers;
- by airlines for other airlines and their passengers;
- by airports;
- or by airlines/pilots for their own flights.

The first three of these are described as "third party handling" while the fourth is termed "self-handling".

2.3 There are three parties involved in the supply of ground handling services at an airport - the airport which allows access to its property by ground

⁴ In this document we use the generic term "ground handling". In EU and UK legislation this is referred to as "groundhandling".

handlers typically on terms set out in authorisations or licences issued by the airport; the airlines (and other aircraft operators) at the airport for whom ground handling services are supplied; and the ground handling suppliers who are contracted by individual airlines to provide services to them. The airport has no direct say in the terms of the contract between an airline and its ground handler (for example in relation to price or service quality) nor does an airline have a direct say in the terms on which its chosen handler is allowed access by the airport to its ground handling facilities.

Origins of the groundhandling directive

- 2.4 Before 1996 ground handling was not subject to separate economic regulation. However, competition law did apply to the supply of ground handling services and continues to do so. During the 1990's there were a number of complaints to the European Commission about practices at some of the most significant airports in Europe. Airlines argued that they experienced relatively high prices and sub-optimal efficiency and service quality. Two key complaints from this period related to the ground handling monopoly at Frankfurt Airport and Paris Charles de Gaulle's charges on suppliers of catering services. In both cases the airports were alleged to have favoured their own ground handling operations.
- 2.5 Following these complaints, the EU decided to legislate in this area. It did so through the 1996 Directive on Access to the Groundhandling Market at Community Airports (96/67/EC)⁵. The stated purpose of the Directive was to increase competition and choice in the supply of ground handling services with the aim of "*reducing the operating costs of the airlines and improving the quality of service provided to airport users*". The European

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0067&qid=1448372813471&from=EN>

Commission decided the competition cases after the Directive came into force. It found that both airports had abused a dominant position.⁶

- 2.6 The Directive established the general principle of freedom of access to the market for both third party handlers and for self-handling airport users. However, it also recognised that for certain categories of handling and depending on the size of the airport it should be possible for Member States to limit the number of parties providing ground handling services where this is warranted.
- 2.7 The Directive was implemented in the UK by means of the Airports (Groundhandling) Regulations 1997 (SI 1998/2389)⁷ and the Airports (Groundhandling)(Amendment) Regulations 1998 (SI 1998/2918)⁸. A consolidated version of the Regulations can be found on the CAA's website.⁹
- 2.8 In implementing the Directive the UK government had two particular objectives in mind. The first was that the implementing rules should not seek to interpret either the intent or the meaning of the Directive. To a great extent, therefore, the Regulations simply repeat the text of the Directive. The second objective was that where the Directive gave discretion to Member States to intervene in the ground handling market, the UK would only implement those aspects where there was a compelling case to do so. The aim here was to make sure that the key objectives of the Directive would be achieved but with the minimum of regulatory intervention.
- 2.9 One area where the Directive gave discretion to Member States was in relation to the national licensing of ground handling suppliers. While a number of Member States subsequently introduced a system of licensing

⁶ Commission decision 98/190/EC of 14 January 1998 relating to a proceeding under Article 86 of the EC Treaty (IV/34.801 FAG – Flughafen Frankfurt/Main AG). Commission decision of 11 June 1998 relating to a proceeding under Article 86 of the EC Treaty (IV/35,613 – Alpha Flight Services/Aéroports de Paris).

⁷ <http://www.legislation.gov.uk/ukxi/1997/2389/contents/made>

⁸ <http://www.legislation.gov.uk/ukxi/1998/2918/contents/made>

⁹ <http://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294978850> - This has been prepared by the CAA for information and should not be relied on for any legal purposes.

of ground handling suppliers, for example Ireland, the UK government elected not to do so.

2.10 In contrast to other areas of CAA regulation, there is no overriding principle or duty in the Regulations to guide the CAA in how it carries out its functions and exercise its discretion. For example, the CAA's general duties in section 4 of the Civil Aviation Act 1982 do not apply. Thus far, we have therefore been guided by what we consider to be the purpose of the EU Directive and the policy and purpose of the Secretary of State when the UK Regulations were implemented. Given that is the case, one purpose of this Request for Information is to seek views on any overriding principles stakeholders consider the CAA should apply when carrying out its functions.

2.11 We are issuing this Request for Information mainly in relation to those of our functions under the Regulations that require the CAA to consider:

- the factors that might justify limiting access to the ground handling market;
- whether the terms of access to ground handling facilities meet the stated criteria; or
- whether a ground handling supplier should be removed from an airport.

2.12 We are doing so as a first stage in the development of guidance on how we apply the Regulations. Our aim is to establish clear and transparent policies for each of our statutory functions that affect stakeholders, including airports, airlines and their passengers, other aircraft operators, and ground handling suppliers. We will take into account the information you provide to us before we publish draft guidance.

Structure of the document

2.13 The rest of the document is structured as follows:

- Chapter 3 - Access to the ground handling market: a Factual Overview.
- Chapter 4 - Compliance with the Regulations.
- Chapter 5 – Scope of the Regulations
- Chapter 6 - Applications to limit the number of third party handlers.
- Chapter 7 – Applications to limit the number of self handling airport users.
- Chapter 8 - Appeals in relation to allocation of space, access charges and consultation.
- Chapter 9 – Applications to prohibit a handler from an airport
- Chapter 10 - Applications to reserve the management of centralised infrastructures.
- Chapter 11 - Separation of accounts by suppliers of ground handling services.
- Chapter 12 - CAA processes and procedures.
- Chapter 13 - How to respond and next steps.
- Appendix A – List of ground handling services in the Directive.
- Appendix B – Traffic at UK airports in 2015.

Chapter 3

Access to the ground handling market: an overview of the CAA's functions

Summary

- 3.1 This chapter provides further details of:
- the rights and obligations of airport operators in respect of third party handling;
 - the self-supply of handling services by airport users;
 - access to ground handling facilities;
 - the prohibition of handlers; and
 - financial accounting.
- 3.2 The nature of these rights and obligations often depends both on the size of the airport (measured by passenger numbers or the volume of freight handled) and into which of two sets of handling the particular handling service falls.
- 3.3 There are 11 broad categories of ground handling services.¹⁰ These can be divided into two sets that are treated in different ways under the Regulations.
- 3.4 The first set of handling services includes the following categories:
- Ground administration and supervision;
 - Passenger handling;

¹⁰ **Appendix A** repeats the Annex from the Directive and specifies the handling services within the scope of 11 broad categories and the particular services within each category. This was initially based on the standard IATA Ground Handling Agreement and has not been revised since 1996.

- Aircraft services;
- Aircraft maintenance;
- Flight operations and crew administration;
- Surface transport, and
- Catering services.

3.5 The second set of handling services includes the following categories, which comprise many (but not all) of the services provided in airside areas of the airport:

- Baggage handling;
- Freight and mail handling;
- Ramp handling; and
- Fuel and oil handling.

Third party handling

3.6 **Table 1** below summarises the position under the Regulations in terms of handling freedoms and the ability of airports to limit those freedoms for the supply of third party handling.

Table 1: Third Party Handling freedoms and limitations

Qualifying airports	Airports up to 2 million passengers or 50,000 tonnes of freight per annum	Airports above 2 million passengers or 50,000 tonnes of freight per annum
Handling services in Set 1	No general freedom of access. Airport decides policy on handling.	General freedom of access but airport may limit to no fewer than two suppliers if approved by the CAA and with a time limited exemption from the European Commission.

Handling services in Set 2	No general freedom of access. Airport decides policy on handling.	General freedom of access but airport may: (a) limit to no fewer than two suppliers if approved by the CAA; or (b) limit to one supplier if approved by the CAA and with a time limited exemption from the European Commission.
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3.7 Should we approve a limit for the number of third party handlers at an airport with more than 2 million passengers the airport must then conduct a tender process to select the handlers. The airport will normally make the selection. However, any person who is "aggrieved" by the airport's selection of handlers may appeal to the CAA. Where an airport provides ground handling services itself, it is allowed to be one of the handlers (without having to go through the selection procedure), and we select the other handlers up to the limit. Our selection of handlers is subject to appeal to the Secretary of State by an "aggrieved" person, In all cases, a supplier of ground handling services is to be selected for a period not exceeding seven years.

Self provision of handling services

3.8 **Table 2** below shows for self-handling the equivalent information as in Table 1.

Table 2: Self-handling freedoms and limitations

Qualifying airports	Airports up to 1 million passengers or 25,000 tonnes of freight per annum	Airports above 1 million passengers or 25,000 tonnes of freight per annum
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<p>Handling services in Set 1</p>	<p>General freedom to self handle but airport may reserve to a limited number of users if approved by the CAA and with a time limited exemption from the European Commission.</p>	<p>General freedom to self handle but airport may reserve to a limited number of users if approved by the CAA and with a time limited exemption from the European Commission.</p>
<p>Handling services in Set 2</p>	<p>No general freedom of access. Airport decides policy on self-handling airport users.</p>	<p>General freedom to self-handle but airport may:</p> <p>(a) limit to no fewer than two named self-handling users if approved by the CAA; or</p> <p>(b) limit to one self handling user or ban self handling if approved by the CAA and with a time limited exemption from the European Commission.</p>

3.9 The self-handling freedoms described in Table 2 are available to "airport users" who are defined in the Regulations as:

"any person responsible for the carriage of passengers, mail or freight by air from or to the airport in question".

This same definition appears in near identical terms in a number of pieces of EU aviation legislation.

3.10 Should we decide to approve an application to limit the number of self-handling airport users we must then in all cases select those able to self-handle on the basis of "relevant, objective, transparent and non-discriminatory" criteria.

Qualifying airports

- 3.11 **Appendix B** lists the UK airports in 2015 with more than 1 million passengers (or 25,000 tonnes of freight) and those with more than 2 million passengers (or 50,000 tonnes of freight) as recorded in CAA Airport Statistics. So far no airport has passed the cargo threshold without also meeting the passenger threshold.
- 3.12 Since the Regulations were introduced in 1997 we have used traffic measured over a calendar year and as reported in CAA Airport Statistics to assess when an airport has passed a traffic threshold in the Regulations.

Criteria for limiting market access

- 3.13 There are a number of types of application that airports can make to the CAA under the Regulations. Where these involve requests to restrict access to the ground handling market at the airport, our role is to determine whether the number of third party handlers or self-handling airport users should be limited. It is also possible for a qualifying airport to apply to the CAA for self-handling for any or all services in Set 2 to be banned altogether.
- 3.14 For any application where the final decision lies with the European Commission (i.e. where airports are seeking particularly restrictive handling arrangements) we have to consider the existence or otherwise of "*specific constraints of available space or capacity (at the airport) arising in particular from congestion and area utilisation rate*"¹¹ that "*make it impossible to open up the market for the supply of groundhandling services (or for self-handling) to the degree provided for in the Directive*".
- 3.15 For other, less restrictive, types of application, for example, those that would limit the number of third party handlers or self-handling airport

¹¹ "area utilisation rate" is not defined in the Directive or the Regulations.

users to no fewer than two for services in Set 2, the Regulations give discretion to the CAA to decide the factors to be taken into account.

3.16 Since the Regulations came into force in 1997 we have considered three applications from airports to limit the number of airside third party handlers, two from Gatwick Airport and one from Heathrow Airport. These were each in the 1998/99 period as follows:

- to limit the number of airside third party handlers at Gatwick to four;
- to limit the number of providers of airside coaching services at Gatwick to two; and
- to limit the number of airside third party handlers at Heathrow to six for baggage and ramp handling and to nine for freight and mail handling.

3.17 Noting that that there were no specific criteria laid down for deciding restrictions in these cases, we placed particular weight on the recitals to the Directive which set out its aims and purposes:

- *Whereas the opening up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users.*
- *Whereas in its Resolution of 14 February 1995 on European civil aviation the European Parliament repeated its concern that account should be taken of the impact of access to the groundhandling market on employment and safety conditions at Community airports.*
- *Whereas free access to the groundhandling market is consistent with the efficient operation of Community airports.*
- *Whereas free access to the market must be introduced gradually and be adapted to the needs of the market.*
- *Whereas for certain categories of groundhandling services access to the market and self-handling may come up against safety, security, capacity and available space constraints; whereas it is therefore*

necessary to be able to limit the number of authorised suppliers of such categories of groundhandling services; whereas it should also be possible to limit self-handling; whereas in that case, the criteria for limitation must be relevant, objective, transparent and non-discriminatory.

3.18 The Directive also states in Article 17 that: "*the provisions of this Directive in no way affect the rights and obligations of Member States in respect of law and order, safety and security at airports.*"

3.19 In the three cases referred to above we focussed on evidence supplied by the airport relating to safety, security, capacity and available space constraints as mentioned in the fifth bullet above. We considered first, whether the case had been made for any limitation in the number of handlers and second, if so, the appropriate maximum number of handlers.

3.20 Gatwick's first application proposed an increase in the number of permitted airside handlers but sought from CAA an upper limit to that increase. Heathrow's application was for a limit lower than the number of handlers then operating at the airport. Gatwick's second application was to reduce the limit from four to two in the number of suppliers of airside bussing services. On the basis of the evidence and argument presented by the respective airports in their applications we approved the limitations applied for at Gatwick, but not those at Heathrow.

3.21 Subsequently, in 2007, at Gatwick's request we removed the limits at that airport as the capacity constraints that had justified the earlier decision had been overcome in the meantime. Since 2007 we have received no further applications to limit third party handling at any UK airport and there have been no applications to limit self-handling. Consequently, there is no airport in the UK where access to the ground handling market (or the ability to self-handle) has been limited through regulatory action requested of the CAA.

3.22 Chapter 6 discusses in more detail our role in relation to market access by third party suppliers and seeks your views while Chapter 7 discusses our role in respect of access by self-handling airport users.

Allocation of space and access charges

3.23 Subject to being able to apply to the CAA for restrictions as described above, the Regulations require the management of an airport to take the necessary measures to ensure that:

- suppliers of ground handling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities;
- any conditions the airport places upon such access (for example, the terms of any authorisation or licence to access those facilities) are relevant, objective, transparent and non-discriminatory;
- the space available for ground handling at the airport is divided among the various suppliers of ground handling services and self-handling airport users, including new entrants, to the extent necessary for the exercise of their rights and to allow effective and fair competition on the basis of relevant, objective, transparent and non-discriminatory rules and criteria; and
- any fee charged for such access is determined according to relevant, objective, transparent and non-discriminatory criteria.

3.24 Any person who considers that a decision or an individual measure taken by an airport does not comply with the criteria in paragraph 3.22 may appeal to the CAA. The right to appeal exists at airports with more than 2 million annual passengers in relation to third party handling and at airports with more than 1 million annual passengers for self-handling airport users for handling services in Set 2.

3.25 Chapter 8 invites views on the factors we should take into account when considering appeals.

Charges related to ground handling

- 3.26 The Regulations encompass some but not all charges payable in relation to ground handling. As noted in paragraph 3.22 above the Regulations cover charges paid for access to ground handling facilities that are provided by airports. These can be levied on ground handlers at the airport but where an airport chooses to charge airlines directly, rather than their handling agents, these charges also fall within the scope of the Regulations.
- 3.27 As explained above, the Regulations lay down broad criteria against which charges should be set by airports for access to airport installations by third party ground handlers and self-handling airport users in order to carry out their handling activities. It is important to note that these are charges levied by the airport as the owner and manager of the facilities that are used for handling.
- 3.28 Ground handling access charges are expressly outside the scope of the Airport Charges Regulations 2011 that implemented the European Directive on Airport Charges (2009/12/EC). In October 2015 we published guidance on the use of our powers under the Airport Charges Regulations.¹²
- 3.29 An airport's handling access charges are, however, subject to UK and European competition law which includes a prohibition on abusive conduct by a dominant market participant. The CAA is a concurrent competition authority with the Competition and Markets Authority (CMA) for Airport Operation Services. These include the ground handling services within the Directive.¹³ We have also published guidance on the exercise of the CAA's competition powers.¹⁴
- 3.30 Handling charges levied on airport users by third party handlers are outside the scope of both the Groundhandling Regulations and the Airport Charges Regulations. These will be usually be negotiated as part of the

¹² <http://www.caa.co.uk/CAP1343>

¹³ Civil Aviation Act 2012; section 68(3)(a)

¹⁴ <http://www.caa.co.uk/CAP1235>

contract between an airline and its handling agent but are subject to UK and European competition law as described above.

3.31 During the period 2009-2013 we considered two appeals from Ryanair under the Regulations in relation to the structure of charges for check-in and baggage services levied on airlines by Gatwick Airport. Gatwick levied ground handling access charges on airlines rather than their ground handling agents and this gave Ryanair a locus to appeal as an "aggrieved" party. In each case we issued directions to the airport about its charging structure.¹⁵ In those decisions we interpreted the statutory criteria for assessing access charges, namely relevant, objective, transparent and non-discriminatory, in the following manner:

- *the primary definition of objectivity is 'unbiased' – as such the link between the costs to the airport in providing a service and the level of the fee for that service should be based on an unbiased approach and is the key to fulfilling the requirements of relevance and objectivity;*
- *to meet the transparency requirement a precise definition of the method of calculating the fee should be made available looking at the services, the cost of those services to the airport and the way in which the fee is calculated by reference to those costs; and*
- *in general terms, to comply with the principle of non-discrimination, comparable situations must not be treated differently and different situations should not be treated in the same way unless there is an objective justification for doing so.*

3.32 More recently we have published our current policy or interpretation of three of the same criteria (in the context of the application of the Airport Charges Regulations). We have said:

¹⁵ The most recent directions are at <http://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294972634>

- *relevant – for criteria to be considered relevant, they ought to be applicable to the circumstances in question, i.e. factors that should be rightly taken into consideration in justifying differentiated charges;*
- *objective – objectivity may be defined as the ability to present or views facts in a dispassionate and repeatable manner, that stands up to outside scrutiny and is rationally apparent to a disinterested observer; and*
- *transparent – transparency is an essential condition for those operating in a market, which ensures that the rules to which they are subject are made obvious. Transparency in the context of the ACRs requires that the reasons behind the prices charged, are clear to all so that charge payers can establish that they are being treated fairly.*

Prohibiting handlers

- 3.33 We can, on application from qualifying airports, decide to prohibit, for such period as we think fit, a third party handler or a self-handling airport user, from providing one or more categories of handling. To prohibit a handler, we have to be satisfied that it has failed to comply with a rule imposed upon it to ensure the proper functioning of the airport.
- 3.34 'A rule' includes an obligation contained in an agreement, an airport byelaw or through other means. The rule must be "*applied in a non-discriminatory manner to the various suppliers of ground handling services and airport users*" and must not "*in practice, reduce market access or the freedom to self-handle to a level below that provided for in these Regulations*".
- 3.35 The ability to ask the CAA to prohibit a third party handler applies at those airports with more than 2 million passengers or 50,000 tonnes of freight per annum. The ability to ask to prohibit an airport user from providing for itself handling services in Set 2 applies at those airports with more than 1 million passengers or 25,000 tonnes of freight per annum. Any airport may

apply to the CAA to prohibit an airport user from providing for itself handling services within Set 1.

3.36 To date, we have received no applications from airports to prohibit handlers.

3.37 Chapter 9 invites views on how we should treat any future applications to prohibit a handler.

Reservation of centralised infrastructure

3.38 We can consider an application from any airport to reserve to itself the management of centralised infrastructures used for the supply of ground handling services "*whose complexity, cost or environmental impact does not allow for division or duplication such as baggage sorting, de-icing, water purification and fuel-distribution systems.*"

3.39 Where centralised infrastructures have been reserved in this way ground handlers and self handling airport users may not use alternative infrastructures.

3.40 During 1998 we approved applications to reserve centralised infrastructures from Birmingham, Leeds Bradford, London City, Luton, Manchester and Stansted Airports. Details can be found on the CAA's website. We published details of each application and received no objections to them.

3.41 Chapter 10 discusses our proposed approach to future applications from airports to reserve the management of centralised infrastructures.

Separation of accounts

3.42 Airports with more than 2 million passengers or 50,000 tonnes of freight that supply ground handling services and suppliers of ground handling services at the same sized airports (both airlines and independent third party handlers) must "rigorously separate" the accounts of their ground

handling activities from any other commercial activities in which they are engaged. Airports may not cross-subsidise their ground handling activities from their other activities.

- 3.43 The role of the CAA is to appoint an Independent Examiner (funded by the entity concerned) to check that the required separation has been carried out. Where the handler is an airport, the Independent Examiner also checks that it is not cross-subsidising ground handling from other revenue sources. The CAA can also require accounting information from those who have to separate their accounts.
- 3.44 The Regulations make a failure to comply with the requirement to maintain separate accounts or to provide information to the CAA a criminal offence subject to fines and, in some cases, imprisonment.
- 3.45 Chapter 11 explains how we propose to exercise our functions in relation to the separation of accounts.

The airport users committee

- 3.46 The Regulations require all airports open to commercial traffic to form an Airport Users Committee (AUC) comprising representatives of airport users or organisations representing airport users. At least once a year the airport must consult with the AUC and with persons providing ground handling services at the airport on the application of the Regulations. The consultation must include, at least, the organisation of the provision of, and the prices charged for, any monopoly supply of ground handling services.
- 3.47 We understand that some airports have established a separate AUC to deal with ground handling matters while others have used an existing consultation forum at the airport for this purpose. In some cases the forum already includes ground handlers. In any event, a failure by an airport to establish and maintain an effective consultation process for ground handling risks an appeal to the CAA under the Regulations.

Chapter 4

Compliance with the Regulations

- 4.1 We expect airports (and other market participants) to be familiar with their rights and obligations in relation to ground handling that are summarised in Chapter 3. It is, however, now almost 20 years since the Directive and the Regulations were introduced and at which time the Department for Transport and the CAA carried out an educational programme with the industry.
- 4.2 With the passage of time, coupled with the absence of market-related cases for a number of years, it is possible that practices may have grown up that are inconsistent with the legislation. For example, entries for a number of airports in the Aeronautical Information Publication (AIP) might be read to imply that self-handling is not permitted and instead some categories of user or all users must use a particular handling agent or one of the agents nominated by the airport.
- 4.3 While the CAA is not given direct responsibility for the enforcement of the various obligations in the Regulations, we would encourage any airports that are not already fully compliant to take steps to become so. Otherwise, they run the risk of civil action through the courts as provided for in the Regulations. At the same time any airports that are presently non-compliant must assess the implications, for example in terms of safety, security and ground management, of allowing greater access to the ground handling market and how any such risks that might arise could be mitigated.
- 4.4 We wish to see any risks inherent in the transition to full compliance managed in an orderly way, and in active collaboration and co-operation between airports, airport users and other interested parties. One of the reasons for issuing this Request for Information is to assist in that process.

- 4.5 We are aware that some airports, that have not applied to the CAA to limit the number of ground handlers, manage their activity locally through authorisations (or "licences") issued by the airport to ground handling suppliers. In some cases local byelaws provide a legal underpinning for such an arrangement.
- 4.6 Such authorisations/licences can include conditions, such as minimum performance standards that the ground handler is expected to meet in areas such as baggage delivery times, check-in queue times, airside driver discipline and on-time aircraft departure performance. They also have to comply with airport policies on, for example, health, safety and environmental matters. There can be escalating sanctions for poor performance by the ground handler leading ultimately to the withdrawal of its authorisation/licence. We are not aware of this final sanction ever being invoked.
- 4.7 Some airports publish regular data on ground handling performance. This can include, for example, baggage delivery times and on-time aircraft departure performance either on an airline by airline or a handler by handler basis.
- 4.8 In terms of compliance with the Regulations we would welcome information and views on the following in particular:
- Q4.1 What risks to safety, security and ground management might be expected to arise for airports from allowing greater access to those who wish either to self-handle or to provide third party handling services?**
- Q4.2 How can any such risks be mitigated short of an application to the CAA to limit the number of third party handlers or self-handling airport users?**
- Q4.3 How could consumers benefit from greater access to the ground handling market?**

- Q4.4** Is the use of authorisations/licences issued by airports to ground handling suppliers an effective mechanism for managing ground handling activities at a local level?
- Q4.5** Is the setting of standards on service quality, preparation and resilience, e.g. in an airport's access authorisation or licence appropriate, especially where influenced by existing airport infrastructures? Please provide examples as appropriate.

Chapter 5

Scope of the Regulations

- 5.1 There are three aspects relating to the scope of the Regulations on which we are inviting views. The first is the interpretation of "open to commercial traffic". The second is the appropriate measurement of passengers (and freight) to determine when an airport passes one of the thresholds in the Regulations. These two aspects are related and are considered under "Qualifying airports" below. The third is the interpretation of "airport user" for the purposes of the ability to self-handle at an airport.

Qualifying airports

- 5.2 In general terms the Regulations apply to airports in the United Kingdom which are open to commercial traffic. We consider that at least those airports that report passengers and aircraft movements as published in our airport statistics would fall within this definition. In practice, and for the purposes of annual reporting to the European Commission on the UK airports within the scope of the Directive, we have adopted a *de minimis* threshold of 1,000 reported annual terminal passengers.

Q5.1 Do you agree with the CAA's approach?

- 5.3 The two relevant thresholds in the Regulations at which certain specific rights and obligations bite are when an airport passes 1 million annual passengers or 25,000 tonnes of freight (in relation to the freedom to self-handle) and 2 million annual passengers or 50,000 tonnes of freight (in relation to the freedom to access the ground handling market).
- 5.4 As noted in paragraph 3.12 above, since 1997 we have relied on our published annual airport statistics for each calendar year to assess when an airport has passed one of the thresholds.

Q5.2 Are CAA's annual airport statistics the most suitable source for determining when a threshold has been passed?

Q53 Which year, or series of years average, should be used to assess if a threshold has been reached?

5.5 Once an airport has passed a traffic threshold in any one year it becomes subject to the rights and obligations applying to such airports. However, if traffic falls to below the relevant threshold in subsequent years, it is for consideration whether those rights and obligations should remain in place, be immediately extinguished or gradually unwound over a sensible period of time. There could, for example, be problems if an airport or ground handlers operating there have invested in facilities and equipment in the expectation that the airport would remain above the threshold for a substantial period. One option would be for an airport's traffic to be below the threshold for at least three consecutive years before the airport would consider withdrawing any handling rights that were given under the Regulations while it was above the threshold. This would allow a reasonable period for transition between the old and new arrangements. An alternative would be to allow existing contracts to run until they expire.

Q5.4 For any airport whose traffic may subsequently fall below a threshold, to what extent should the rights and obligations in the Regulations continue to apply to it?

Airport user

5.6 Paragraph 3.9 above repeats the definition of an airport user found in the Regulations (and in the Directive). This refers to a person responsible for the carriage of passengers, mail or freight by air to or from the airport in question. The CAA has interpreted the same definition in the context of the Airport Charges Regulation to encompass general aviation as well as commercial aviation. CAA's In Focus publication in February 2016 identified that non-commercial aviation is affected by airports' decisions concerning access to their ground handling market.

- Q5.5** Does this definition imply that certain categories of flight, or some individual flights, would be prevented from taking advantage of the handling freedoms in the Regulations, particularly for self-handling, for example flights operating without passengers or cargo?
- Q5.6** If so, would any such exclusions be reasonable when set against the aims and objectives of the Directive?
- Q5.7** Are there any reasons why the same interpretation used by CAA with regard to the Airport Charges Regulations should not apply in the case of the Groundhandling Regulations?

Chapter 6

Applications to limit the number of third party handlers

6.1 The Directive establishes the general principle that there should be freedom of access to those wishing to provide handling services at the larger airports within the EU. If we were to assume that the ground handling market behaves in a similar way to most supply of services markets the presence of competition and choice in the provision of ground handling services would normally be expected to deliver better outcomes for consumers (whether direct consumers of services, i.e. airlines or their customers i.e. fare paying passengers) in terms of price and service performance than would result from non-competitive handling arrangements, for example where there is only one ground handler at the airport.

6.2 However, we are aware that there are those with views that increasing participation in the market has potential negative outcomes, e.g. while it may lead to lower prices, it can reduce operational efficiency on the airport apron, have an adverse effect on the terms and conditions of handling staff and/or could impact safety.

Q6.1 What are the general benefits and/or disbenefits of increasing the number of ground handling suppliers at an airport?

6.3 As an exception to the general principle of freedom of access, the Regulations (reflecting the rights of Member States under the Directive) allow airports to apply to the CAA for approval to limit the number of third party handlers as summarised in Table 1 above. There should be no presumption that we will be minded to approve any applications that airports might make. Any application would necessarily be seeking a restriction in an otherwise fully competitive market. Because of this, we

would expect any application to be well supported by argument and evidence which we would want to subject to a critical assessment. The case for a restriction would have to be clearly established.

Applications for no fewer than two suppliers

'Airside' handling services

6.4 As noted earlier, the Regulations do not lay down any criteria against which we are expected to decide applications from airports to limit to no fewer than two the number of third party handlers providing services in Set 2. We therefore want to establish a clear and transparent policy for determining our general approach to an application, the factors to be taken into account and the evidence that would need to be provided. We recognise, of course, that circumstances will differ from airport to airport and that local factors will always have to be taken into account.

6.5 We would therefore welcome information and views on the following matters in particular:

Q6.2 How should factors of safety, security, and available space and capacity determine the CAA's decision on an application to limit access to the ground handling market?

Q6.3 Are there circumstances in which one of these factors should be given greater weight than the others?

Q6.4 What types of evidence relating to safety, security and available space and capacity would be relevant to the CAA's decision?

Q6.5 How should the CAA assess such evidence?

Q6.6 Are there any other factors the CAA should take into account besides safety, security and available space and capacity to justify a restriction?

- Q6.7** What weight should the CAA give to these factors and in what circumstances?
- Q6.8** How could consumers benefit from a fully competitive market ground handling market?
- Q6.9** Are there any special factors that would apply only for applications to limit the number of third party handlers and would not be relevant for applications to limit self-handling discussed in the next chapter?

‘Landside’ handling services

6.6 For services in Set 1 (largely but not exclusively those provided landside) the CAA can consider applications to limit the number of suppliers to no fewer than two. In such cases, we have to take into account the specific constraints of available space or capacity that make it impossible to open up the market for the supply of ground handling services to the degree provided for in the Directive. Any decision we make to grant such an application may not be for a duration of more than three years. Our decision is then subject to review and a final decision by the European Commission.

6.7 In relation to any application that might be made to the CAA to allow a limited number of suppliers of third party handling services in Set 1 we would welcome information and views on the following issues:

- Q6.10** What evidence should the applicant airport be expected to provide in support of its case for a limited number of suppliers?
- Q6.11** How should the CAA assess such evidence?
- Q6.12** Should the CAA take into account other factors beyond capacity and space constraints?
- Q6.13** How could consumers benefit from a fully competitive ground handling market?

Applications for a single supplier

'Airside' handling services

- 6.8 The Regulations specify that applications to restrict third party handling for services in Set 2 to a single supplier are to be assessed against specific constraints of available space or capacity arising in particular from congestion and area utilisation rate. Any decision we make to grant such an application may not be for a duration of more than two years. Our decision is then subject to review and a final decision by the European Commission.
- 6.9 Since 1996 the European Commission has dealt with a small number of notifications for time-limited ground handling monopolies at European airports, none being in the UK. Most of these were in the years immediately following the Directive and involved airports in Germany, France and Portugal. As these decisions have become dated they are no longer available on the Commission's website.
- 6.10 More recently, however, the Commission dealt in 2015 with an application for limitations at Zagreb airport in Croatia.¹⁶ The Commission approved an exemption for two years (until December 2016) during which time there would be a single supplier of airside services (other than aircraft marshalling) while self-handling for the same services would be banned. The exemption was granted because the Commission was satisfied with the conclusion of the Croatian authorities that the capacity constraints at the airport would not be overcome until a second terminal was constructed by the end of 2016.
- 6.11 The Commission is assisted by an Advisory Committee created by the Directive and comprising members from each of the Member States. For the UK both the DfT and the CAA are represented on the Advisory Committee. The views of members of the Advisory Committee are canvassed on each application received by the Commission for an exemption to maintain or create a monopoly in ground handling services.

¹⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D0424&rid=4>

6.12 In relation to any application that might be made to the CAA to allow a single supplier of third party handling services we would welcome information and views on the following issues:

Q6.14 What evidence should the applicant airport be expected to provide in support of its case for a monopoly supplier?

Q6.15 How should the CAA assess such evidence?

Q6.16 Should the CAA take into account other factors beyond capacity and space constraints, such as safety and security?

Q6.17 How could consumers benefit from a fully competitive market ground handling market?

Selection of handlers

6.13 In cases where the CAA approves a limit in the number of third party handlers the airport must then conduct a tender process to select them. An exception to this is where the airport itself provides ground handling services (and the Regulations give airports the right to do so) in which case we have to make the selection of the remaining handlers within the approved limit following the airport's tender process. Before making the selection we have to consult both the Airport Users Committee and the airport but beyond this the Regulations do not specify any criteria against which the CAA is expected to make the selection.

6.14 Our understanding is that there are a small number of airports in the UK with more than 2 million passengers where the airport itself provides handling services. The situation could therefore arise where we would be called upon to make the selection. We will therefore wish to develop criteria for choosing the handlers. Clearly any selected by the CAA will need to demonstrate that they meet all the necessary safety and security requirements. Subject to this we could, for example, take into account the extent to which the additional handler or handlers could provide effective

competition both to the airport handler, and to any other handlers at the airport, in terms of their price and service offerings and thereby contributing to the aims and objectives of the Directive.

Q6.18 What factors should the CAA take into account when selecting the ground handlers?

Q6.19 What weight should the CAA give to the views of the Airport Users Committee on the one hand and the airport on the other when selecting handlers?

Chapter 7

Applications to limit the number of self handling airport users

- 7.1 As with third party handling, the Directive establishes the general principle that those airport users wishing to self supply for handling services should be free to do so, subject again to the possibility those rights can be restricted in certain situations.
- 7.2 As an exception to the general principle, the Regulations enable airports, where appropriate, to apply to the CAA to limit the number of self-handling airport users as summarised in Table 2 in Chapter 3. Again there should be no presumption that we will be minded to approve any applications that airports might make. We would expect any application to be well supported by argument and evidence that we would want to subject to critical assessment. The case for a limitation will have to be clearly established.

‘Airside’ handling services

- 7.3 For the self-supply of services in Set 2 (mainly in airside areas of the airport), the Regulations do not lay down any criteria against which we should decide applications from airports to limit to no fewer than two the number of self-handling airport users. We therefore want to establish a clear and transparent policy for determining our approach to an application, the factors to be taken into account and the evidence that would need to be provided.
- 7.4 We would therefore welcome information and views on the following matters in particular:
- Q7.1 How far should factors of safety, security and available space and capacity determine the CAA's decision on an**

application to limit the number of self-handling airport users for airside services at the airport in question?

Q7.2 Are there circumstances in which one of these factors should be given greater weight than the others?

Q7.3 What types of evidence relating to safety, security and available space and capacity would be relevant to the CAA's decision?

Q7.4 How should the CAA assess such evidence?

Q7.5 Are there any other factors the CAA should take into account beyond safety, security and available space and capacity?

Q7.6 What weight should the CAA give to these factors and in what circumstances?

Q7.7 Are there any special factors that should apply to decisions on whether to limit the number of self-handling airport users, for example the impact on the size of the residual third party handling market and its attractiveness to ground handling suppliers?

7.5 Where an airport applies to the CAA to ban airside self-handling or to restrict it to a single airport user, we have to take into account specific constraints of available space or capacity arising in particular from congestion and area utilisation rate. Any decision we make for a restriction may be for a duration of no more than three years. Our decision is subsequently subject to review and a final decision by the European Commission.

7.6 As noted in the previous chapter, in 2015 the European Commission approved an exemption for two years at Zagreb airport when self-handling would be banned for most categories of handling. This was due to capacity constraints that would not be overcome until a second terminal was constructed.

- Q7.8** What evidence should the applicant airport be expected to provide in support of its case?
- Q7.9** How should the CAA assess such evidence?
- Q7.10** Should the CAA be able to take into account other factors beyond capacity and space constraints?

‘Landside’ handling services

7.7 For handling services in Set 1 (mainly landside), an airport may apply to the CAA to reserve self-handling to a limited number of airport users. Here we also have to take account specific constraints of available space or capacity arising in particular from congestion and area utilisation rate. Any decision we make for a restriction may also be for a duration of no more than three years. Our decision is also subject to review and a final decision by the European Commission.

- Q7.11** What evidence should the applicant airport be expected to provide in support of its case?
- Q7.12** How should the CAA assess such evidence?
- Q7.13** Should the CAA be able to take into account other factors beyond capacity and space constraints?

Selection of self handling airport users

7.8 Should the CAA decide to grant an application to limit the number of self-handling airport users at an airport, we must at the same time select those authorised to self-handle. The selection has to be made against "relevant, objective, transparent and non-discriminatory" criteria.

- Q7.14** Should the CAA interpret these criteria in broadly the same way as described in paragraph 3.31 above recognising that our interpretation of these terms was developed in relation to the levying of charges rather than selecting suppliers?

- Q7.15** How should the CAA apply these criteria in choosing those airport users allowed to self-handle?
- Q7.16** In what ways could the CAA's selection contribute to (or detract from) achieving the aims and objectives of the Directive?

Chapter 8

Appeals to the CAA

- 8.1 The Regulations allow for appeals to be made to the CAA by an "aggrieved" person in relation to:
- the selection of handlers by an airport;
 - the allocation of space to handlers and charges for access to handling facilities; and
 - consultation by the airport on the provision of ground handling.

Selection of handlers

- 8.2 Paragraph 3.7 explained that where the CAA has approved a limitation in the number of ground handlers at an airport and the airport has subsequently selected the handlers (following a tender process), that selection may be appealed to the CAA.

Q8.1 What factors do you consider should be relevant to a CAA decision in any future appeals on the selection of handlers by an airport?

Allocation of space and access charges

- 8.3 Paragraphs 3.23 to 3.30 described the CAA's appellate role in relation to the terms on which airports allow access to ground handling facilities, including the charges levied by airports for such access. In all cases the conditions the airport places on access to necessary installations (including e.g. the terms of any licence or authorisation), as well as the criteria used by the airport for allocating space and setting charges must be "relevant, objective, transparent and non-discriminatory" and any appeal will consider whether these criteria have been followed.

- 8.4 Paragraph 3.31 explained how the CAA interpreted these criteria in the two appeals that we have dealt with under the Regulations while paragraph 3.32 described how the same criteria have been interpreted in more recent CAA guidance on the application of the Airport Charges Regulations 2011.
- 8.5 Where airports seek to control access by means of specifying minimum criteria in authorisations, licences or other instruments, those criteria must be relevant, objective, transparent and non-discriminatory.
- 8.6 We invite views on:
- Q8.2 Should the CAA interpret these criteria in broadly the same way as described in paragraph 3.31 above?**
- Q8.3 What factors do you consider should be relevant to a CAA decision in any future appeals in relation to the allocation of space by airports?**
- Q8.4 What factors do you consider should be relevant to a CAA decision in any future appeals in relation to airport access charges?**

Ground handling charges

- 8.7 Access charges levied by airports on suppliers of ground handling services have been the subject of a number of cases before national and international competition or regulatory authorities. These were discussed in a CAA Competition Working Paper published in January 2016.¹⁷ The broad findings in these cases, some of which pre-date the Directive, were that:
- Airports cannot charge a fee for the grant of a commercial opportunity or use a fee as a way of sharing in the expected profits of the provider;

¹⁷ [CAP 1370](#); paragraphs 3.53 to 3.76

- An airport may, however, earn a reasonable profit on the installations it provides to ground handlers; and
- Any fees charged for access to or use of handling infrastructure must be non-discriminatory.

Q8.5 While this document is not inviting complaints about ground handling charges, we would nonetheless welcome information on how different UK airports structure their ground handling charges.

Consultation

8.8 Paragraphs 3.46 and 3.47 explained the obligation on airports to set up an AUC and consult at least once a year with it and with ground handlers on the application of the Regulations. Any affected person may appeal to the CAA if they do not consider that the required consultation is taking place.

8.9 We do not think it would be appropriate or sensible to lay down rules for how airports should consult with airport users and ground handlers. The Directive (and hence the Regulations) does not prescribe the subject matter for, or the conduct of, the consultation other than in quite general terms and the arrangements are likely to vary from airport to airport according to local circumstances. That being so the CAA would expect to consider any appeal in this area on its individual merits.

Sector reviews

8.10 Whether or not we receive an individual appeal in respect of any airport, we may from time to time carry out a review of any of these aspects of airport operation services under section 64 of the Civil Aviation Act 1982.

Chapter 9

Applications to prohibit a handler from an airport

- 9.1 Paragraphs 3.33 to 3.37 explained how the CAA may, on application from an airport, prohibit a third party handler or a self-handling airport user from providing one or more categories of ground handling. The CAA's understanding is that this applies where the third party handler or self-handling airport user concerned has been active at the airport but it cannot be used where a handler or self-handler wishes to begin providing services at the airport concerned. Barriers to entry that are created or maintained by an airport can be addressed, as applicable, through the appeals process discussed in the previous chapter, by the application of competition law or by private action through the courts.
- 9.2 In dealing with any application to prohibit a handler the CAA has to make two decisions:
- Should a prohibition be approved; and
 - If so, for what period should a prohibition apply?
- 9.3 To consider approving a prohibition the CAA first has to be satisfied that the handler concerned has failed to comply with a rule imposed upon it to ensure the proper functioning of the airport. The Regulations specify that a "rule" includes an obligation contained in an agreement, a byelaw made under section 63 of the Airports Act 1986 or Article 18 of the Airports (Northern Ireland) Order 1994, or otherwise. This would appear to embrace conditions included in authorisations or licences issued by airports to ground handlers, particularly where these are underpinned by airport byelaws.
- 9.4 On the other hand, the Regulations do not further define what constitutes the "proper functioning" of the airport. In our view this term connotes factors such as safety, security and operational efficiency rather than the nature of the product of the particular handler.

9.5 In reaching a decision we consider that the following considerations are likely to be amongst those of particular relevance:

- What is the rule that the handler is alleged to have breached?
- How was it imposed on the handler?
- Why is the rule necessary to ensure the proper functioning of the airport?
- Is the rule applied in a non-discriminatory manner?
- Does the rule constitute a barrier to entry to the ground handling market?
- What is the evidence that the rule has been breached?
- Over what period has the rule allegedly been breached? Is any breach persistent or a single instance?
- How has the breach of the rule adversely affected the proper functioning of the airport?
- Has the handler been given the right to formally respond to the allegations?

9.6 We invite views on:

Q9.1 Do you agree that these are relevant considerations for the CAA to take into account?

Q9.2 Are there other relevant factors the CAA should take into account?

9.7 The CAA is very aware that the approval of an application to prohibit a handler has far-reaching consequences for the handler concerned, its staff and its customer airlines and their passengers.

9.8 The CAA would always impose any prohibition on and for the minimum terms it considered necessary to address the problem identified in the application for prohibition. Moreover the CAA would normally expect to

indicate when it would be likely to be able to review or reconsider its decision, based on the information available to it at that time, if the handler made such an application to the CAA.

9.9 We invite views on:

Q9.3 What relevant factors should the CAA take into account when considering the duration of any prohibition?

Chapter 10

Applications to reserve the management of centralised infrastructure

10.1 Paragraphs 3.38 to 3.41 described how an airport can apply to the CAA to reserve to itself the management of centralised handling infrastructure that cannot reasonably be divided or replicated elsewhere on grounds of complexity, cost or environmental impact. Examples mentioned in the Regulations are baggage sorting, de-icing, water purification and fuel-distribution systems.

Q10.1 How should the CAA assess the "complexity" of a centralised handling infrastructure if this is advanced as grounds for a reservation?

Q10.2 Are there other examples of centralised handling infrastructure beyond those mentioned in the Regulations where a case might be made for a reservation?

10.2 We would consider the evidence presented by the airport in support of any application together with any responses to the CAA's published notice of the application.

10.3 All applications will need to address the criterion above and will be published on the website. We would prioritise investigating further, before making a decision, applications that are opposed. Unlike proposals to limit the number of third party handlers or self-handling airport users we would not expect an application to reserve the management of centralised infrastructures to have an adverse impact on the competitive ground handling market so long as all handlers have access to that infrastructure on reasonable and non-discriminatory terms. We would, however, want to consider carefully any arguments presented by an interested party that an application has anti-competitive features.

- 10.4 Even if we approve an application, we may from time to time, carry out a sector review of this aspect of airport operation services under section 64 of the Civil Aviation Act.

Chapter 11

Separation of accounts by suppliers of ground handling services

- 11.1 Paragraphs 3.41 to 3.43 explained the role of the CAA in the separation of accounts for ground handling from any other activity in which the handler is engaged. We appoint an Independent Examiner (IE) in such circumstances to check that the necessary accounting separation has been carried out. We also have powers to require accounting information from any ground handler that has to separate their accounts.
- 11.2 The Regulations do not ask those subject to accounting separation to notify the CAA of this fact. This means that we do not routinely hold the information on which to decide where we should be appointing an IE. However, since failing to comply with accounting separation, where this is required, is an offence, it may be in the interests of those who provide ground handling services to consider whether they should be maintaining separate accounts and, if so, to ask the CAA to appoint an IE.
- 11.3 We would normally expect to appoint the nominated IE, particularly where they are already the auditor of the entity concerned or are otherwise suitably qualified. The IE should send us a copy of an annual statement that the necessary checks on account separation have been carried out. We publish that statement in our Official Record.
- 11.4 The airport concerned bears the costs of the IE.

Chapter 12

CAA processes and procedures

- 12.1 Many of the processes and procedures we follow are prescribed by the Regulations but we do have discretion in some procedural aspects.

Applications to the CAA

- 12.2 Applications to the CAA to restrict the number of third party handlers or self-handling airport users, to prohibit a handler or to reserve the management of centralised infrastructures are processed in accordance with Schedule 1 of the Regulations. The main elements of Schedule 1 are summarised below.
- 12.3 Applications must include information specified by the CAA. The information we currently ask for is described on the CAA's website.¹⁸ Any application for restrictive handling arrangements that are ultimately to be decided by the European Commission must be accompanied by a plan of appropriate measures to overcome the specific constraints of available space or capacity against which the application has been made. After we have assessed the information provided in response to this Request we will review whether the information requirements, in place since 1997, should be updated.

Q12.1 We would welcome views on the information that should accompany an application.

- 12.4 Applications must also be accompanied by the application fee specified in the CAA's Scheme of Charges. The application charge is currently £500 and has been at this level for many years. Following a review of the costs that the CAA would expect to incur in dealing with an application, including oral hearings in contested cases, we proposed to increase the

¹⁸ <http://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294978149>

application charge on 1 June 2016 to £1,000. This would be supplemented by a charge of £15,000 payable at the point that an oral hearing is required. The CAA invited views on this proposal as part of its general consultation on charges for 2016/17.¹⁹

- 12.5 Where the application is to prohibit a ground handler or a self-handling airport user, the airport must copy its application to that party.
- 12.6 We publish details of all applications in our Official Record (Series 2) (and also on the ground handling page of the CAA website), inviting comments on them from interested parties within a period of not less than 14 days.
- 12.7 Any person may make to us a written objection to, or representation about, the application within the stated period.
- 12.8 Certain persons have a right to be heard by the CAA. These include the applicant airport concerned, an airport user, and suppliers of ground handling services. We have discretion to hear other parties with an interest in the application and who have submitted an objection or representation.
- 12.9 We invite the parties to submit their cases in writing and to cross-copy them to other parties. Where a submission contains confidential information we would ask for both a full and a redacted version and, in the first instance, only disclose the latter to other parties. (It may be necessary to discuss fuller disclosure on closer consideration of the information redacted) On the basis of the written submissions CAA staff will prepare a panel brief which will normally be shared with the parties before the oral hearing.
- 12.10 Hearings are held in public and typically with a panel of two CAA Board Members sitting with advisers. Oral evidence is presented and parties are normally given the opportunity to cross-examine each other. A formal transcript is taken and is made available to the parties and published on the CAA's website subject to any redactions for reasons of confidentiality.

¹⁹ <http://www.caa.co.uk/Our-work/Consultations/Closed/2016/CAA-statutory-charges/>

- 12.11 The panel issues its decision and reasons and this is also published in the Official Record and on the CAA's website.
- 12.12 Decisions by the CAA to limit the number of self-handlers or to prohibit a handler from the airport can be appealed to the Secretary of State. CAA decisions to limit the number of third party handlers or to reserve the management of centralised infrastructures cannot be appealed in this way.

Appeals to the CAA

- 12.13 Any "aggrieved" person may appeal to the CAA against a decision or individual measure of an airport of the following types:
- consultation by the airport with the AUC and ground handlers on the organisation of the provision of ground handling services;
 - the selection of suppliers by the airport where the CAA has agreed to limit their number; or
 - the terms on which the airport allows access to ground handling facilities.
- 12.14 The process for an appeal to the CAA is set out in Schedule 2 Part I to the Regulations.
- 12.15 An appeal must be in writing, identify the decision or measure to which it relates, state the grounds on which the appeal is based and the arguments on which the appellant relies. The appeal must be served on:
- the CAA;
 - the airport concerned; and
 - where appropriate, the handlers selected by the airport.
- 12.16 An appeal against a decision of the airport to select particular handlers must be made within one month of the decision being made. In all other cases the appeal must be served promptly and in any event within one

month of the date of the airport's decision although the CAA can extend this period if it considers that there is good reason for doing so.

- 12.17 The CAA will ask the parties to the appeal (the appellant and those other parties served an appeal notice) whether they require an oral hearing. If any party requests an oral hearing it will be conducted in the same way as for applications and described in paragraphs 12.9 to 12.11. The CAA's decision may include directions to the airport concerned.

Appeals to the Secretary of State

- 12.18 Any person who is "aggrieved" by a decision of the CAA to limit the number of self-handling airport users at an airport and/or on their identity; to select third-party handlers at an airport that itself provides ground handling services, or to prohibit a handler, has a right to appeal that decision to the Secretary of State. The process for such an appeal is set out in Schedule 2 Part II of the Regulations.

Chapter 13

How to respond and next steps

- 13.1 We are particularly keen to receive information and views from airports, airlines, other aircraft operators, ground handling companies and other interested parties on the issues and questions raised in this document.
- 13.2 In the interests of transparency, we intend to publish as much information as possible on our website. If any of the information you provide or views you express are considered confidential please provide both confidential and non-confidential versions. The non-confidential responses will be published on our website with our report on the results of this Request for Information. In general, we will not publish information if we consider that the disclosure of such information would, or might in our opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or an individual's interests.
- 13.3 This Request for Information runs until 28 June 2016 during which time we would welcome submissions. These may be either in written form or we are happy to host meetings to discuss issues in detail with industry representatives. Please provide any written submissions to economicregulation@caa.co.uk by 28 June 2016.
- 13.4 Once we have considered the responses we will publish a summary of them and the CAA's initial response. We then plan to produce a draft guidance document on which we will invite comments.

Figure 13.1: Timetable for review

Event	Date
Request for Information published	17 May 2016
Request for Information closes	28 June 2016
Summary of responses and next steps published	August 2016
Draft guidance document	Autumn 2016

Appendix A

List of ground handling services in the Directive

1. Ground administration and supervision comprise:

- 1.1. representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;
- 1.2. load control, messaging and telecommunications;
- 1.3. handling, storage and administration of unit load devices;
- 1.4. any other supervision services before, during or after the flight and any other administrative service requested by the airport user.

2. Passenger handling comprises any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.

3. Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

4. Freight and mail handling comprises:

- 4.1. for freight: physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;
- 4.2. for mail: physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.

5. Ramp handling comprises:

- 5.1. marshalling the aircraft on the ground at arrival and departure;
- 5.2. assistance to aircraft parking and provision of suitable devices;
- 5.3. communication between the aircraft and the air-side supplier of services;
- 5.4. the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;
- 5.5. the provision and operation of appropriate units for engine starting;
- 5.6. the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;
- 5.7. the transport, loading on to and unloading from the aircraft of food and beverages.

6. Aircraft services comprise:

- 6.1. the external and internal cleaning of the aircraft, and the toilet and water services;
- 6.2. the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;
- 6.3. the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.

7. Fuel and oil handling comprises:

- 7.1. the organization and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;
- 7.2. the replenishing of oil and other fluids.

8. Aircraft maintenance comprises:

- 8.1. routine services performed before flight;
- 8.2. non-routine services requested by the airport user;
- 8.3. the provision and administration of spare parts and suitable equipment;
- 8.4. the request for or reservation of a suitable parking and/or hangar space.

9. Flight operations and crew administration comprise:

- 9.1. preparation of the flight at the departure airport or at any other point;
- 9.2. in-flight assistance, including re-dispatching if needed;
- 9.3. post-flight activities;
- 9.4. crew administration.

10. Surface transport comprises:

- 10.1. the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;
- 10.2. any special transport requested by the airport user.

11. Catering services comprise:

- 11.1. liaison with suppliers and administrative management;
- 11.2. storage of food and beverages and of the equipment needed for their preparation;
- 11.3. cleaning of this equipment;
- 11.4. preparation and delivery of equipment as well as of bar and food supplies.

Appendix B

Traffic at UK airports in 2015

Airports with more than 1 million passengers or 25,000 tonnes of freight	Airports with more than 2 million passengers or 50,000 tonnes of freight
Heathrow	Heathrow
Gatwick	Gatwick
Manchester	Manchester
Stansted	Stansted
Luton	Luton
Edinburgh	Edinburgh
Birmingham	Birmingham
Glasgow	Glasgow
Bristol	Bristol
Newcastle	Newcastle
East Midlands	East Midlands
Belfast International	Belfast International
London City	London City
Liverpool	Liverpool
Aberdeen	Aberdeen
Leeds Bradford	Leeds Bradford
Belfast City	Belfast City
Southampton	
Cardiff	

Source: CAA Airport Statistics