

The Airport Charges Regulations

Annual Report 2015-16

CAP 1458



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Chapter 1

Introduction

- 1.1 The Airport Charges Regulations 2011 (ACRs) implement European Directive (2009/12/EC) on airport charges into UK law. The Directive covers airports that handle more than 5 million passengers per annum, and:
- sets common principles on transparency and consultation for airports in determining charges levied on users;
 - 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 (ISA) 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 competition¹.
- 1.2 The ACRs require us, as the UK ISA, to publish an annual report concerning the exercise of our functions (Regulation 32). This report covers the period from 1 April 2015 to 31 March 2016. Previous reports are available on our website².
- 1.3 During the period of the report we had the following functions under the ACRs:
- to give notice to an airport operator that the ACRs apply in relation to that airport for that year (Regulation 5);
 - to publish a list of regulated airports for the following year (Regulation 6);

¹ The UK has such procedures under the Civil Aviation Act 2012.

² <http://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Airport-charges-regulations/>

- to consider imposing a penalty on an airport user for failing to provide prescribed information to an airport operator under Regulation 7(4) (Regulation 16);
- to investigate whether an airport operator is failing, or has failed, to comply with an obligation under the ACRs (Regulation 20); and
- to impose a compliance order on an airport operator that is failing, or has failed, to comply with an obligation under the ACRs (Regulation 21).

Structure of report

1.4 The rest of this report is structured as follows:

- Chapter 2 looks at how we have exercised our functions under the ACRs; and
- Chapter 3 looks at other issues concerning the ACRs; including guidance on the application of our powers under the ACRs and the Thessaloniki Forum of Airport Charges Regulators established by the European Commission.

Chapter 2

Our work under the ACRs

- 2.1 We have a function under Regulation 5(1) to give notice to an airport operator that the airport will be subject to the ACRs in a particular year. In 2015, we gave notice to the nine airports that had over 5 million passengers in 2014 that they would be subject to the ACRs in 2016. In 2016, we gave notice to the same nine airports that had over 5 million passengers in 2015 that they would be subject to the ACRs in 2017.
- 2.2 We have a function under Regulation 6(2) to publish the list of airports which we consider are regulated airports in each year. The lists are in Figure 1 below.

Figure 1: Regulated airports in 2016 and 2017

Airports covered by ACRs	2016	2017
	Passenger numbers in 2014 (million)	Passenger numbers in 2015 (million)
Heathrow	73.371	74.954
Gatwick	38.094	40.260
Manchester	21.950	23.095
Stansted	19.958	22.498
Luton	10.482	12.263
Edinburgh	10.159	11.113
Birmingham	9.698	10.179
Glasgow	7.709	8.710
Bristol	6.333	6.781

Source: CAA statistics

Provision of information by airport users

- 2.3 In the period covered by this report it was not drawn to our attention that any airport user had failed to provide the necessary information to any of the qualifying airports. Consequently, we have not considered imposing any penalties on airport users for failing to provide information.

Compliance with obligations by airport operators

- 2.4 We have a function under Regulation 20 to investigate whether an airport operator is failing, or had failed, to comply with an obligation imposed on it under the ACRs. We may do so at any time but if we receive a complaint from a person on whom airport charges have been levied at the airport, or from another airport operator which claims its business has been materially harmed by an alleged failure to comply with the ACRs, we must investigate that complaint.
- 2.5 We have not received any complaints that an airport operator has not complied with an obligation under the ACRs, nor have we investigated whether an airport operator was failing to comply, or had failed to comply, with an obligation under the ACRs during the period of this report.
- 2.6 If we are satisfied that an airport operator is failing to comply, or had failed, to comply with an obligation under the ACRs, we may impose a compliance order on the airport operator under Regulation 21. We have not imposed any compliance orders during the period of this report.

Chapter 3

Other issues

Guidance on the application of our powers under the ACRs

- 3.1 After consultation we published guidance on the application of our powers under the ACRs to advise airport operators, airport users and other stakeholders of how we intend to interpret, monitor and enforce the obligations on airport operators and users under the ACRs³.
- 3.2 The guidance sets out how airport users and airport operators may complain to us if they consider the provisions of the ACRs have been breached. We encourage those with concerns about possible non-compliance to try and resolve matters through discussions and speak to us before making a complaint. Potential complainants should also consider any relevant decisions and gather as much evidence and information as possible. Details of what we would expect to be in a reasoned, written complaint are available in the guidance.
- 3.3 When enforcing the ACRs, we have a view to ensuring that, where possible, changes to the system and level of airport are agreed between airport operators and airport users. However, we do not regulate airport charges under the ACRs, as the UK has made use of the opt out in Article 6(6) of the Directive. Regulation of airport charges is undertaken using the provisions for market power assessments and economic licensing under the Civil Aviation Act 2012.
- 3.4 In our view the ACRs should not hinder the development of negotiated agreements between airport operators and users. These are part of normal commercial behaviour which allows users to grow their services at an airport. We do not expect airport operators to disclose to all users the key commercial details of individual negotiated agreements where doing

³ [CAP 1343 - Guidance on the application of the CAA's powers under the Airport Charges Regulations 2011](#)

so could breach competition law. However, if airport operators are prepared to negotiate with users over airport charges, we do expect them to inform all users that they are prepared to negotiate with them. In addition, airport operators should be prepared to disclose their overall rationale for making such agreements and indicate the kinds of commitments they would accept from airlines in return for lower prices.

- 3.5 When entering into commercial agreements, airport operators need to be mindful of the need not to discriminate between airport users (Regulation 14) and the provisions on the basis of providing differentiated services (Regulation 15).

Thessaloniki Forum of Airport Charges Regulators

- 3.6 In 2014, the European Commission established an expert group to advise it on airport charges. During the year the Forum met twice: in April and December 2015. At the April meeting, we presented on the market power determinations for Heathrow, Gatwick and Stansted airports completed in 2014. At the December meeting, we presented a discussion paper on transparency and commercial agreements. A sub-group of the Forum was set up at the December meeting to discuss consultation and the cost of capital. We are a member of the sub-group which met in March and June 2016.

Civil Aviation Authority

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