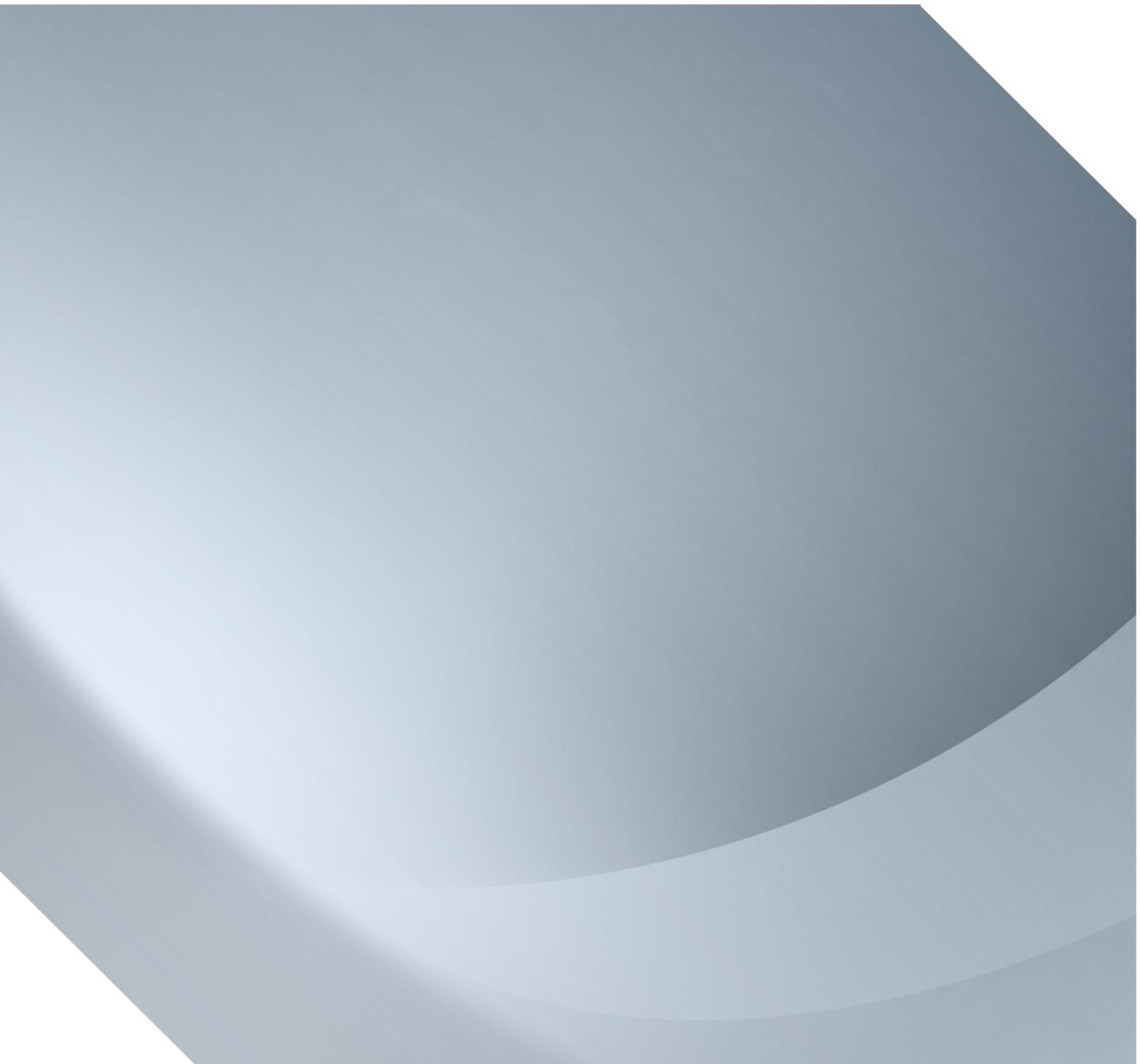


# Transition of the framework for the economic regulation of airports in the United Kingdom

**CAP 1017**



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# Transition of the framework for the economic regulation of airports in the United Kingdom

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## Introduction

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- 1.1 During December 2012 and January 2013 the Department for Transport consulted<sup>1</sup> on the arrangements for the transition from the current regulatory framework for airports economic regulation as set out in Part IV of the Airports Act 1986 ("the 1986 Act") and Part IV of the Airports (Northern Ireland) Order 1994 ("the 1994 Order") to the new regulatory framework set out in Part 1 of the Civil Aviation Act 2012 ("the 2012 Act"). The 2012 Act received Royal Assent on 19 December 2012. On 28 February 2013 the Department for Transport announced that the main operative provisions of Part 1 of the 2012 Act would take effect on 6 April 2013 with the Act coming wholly into force by 1 April 2014<sup>2</sup>. This has subsequently been implemented through the Civil Aviation Act 2012 (Commencement No. 1, Transitional, Transitory and Saving Provisions) Order 2013 (S.I. 2013/589) which sets out the sequence in which the existing provisions are "switched off" and the new provisions "switched on".
- 1.2 This note has been prepared by the CAA as an aid to understanding by airport operators, airlines and other interested parties of the practical implications of the change from the current to the new framework for airport economic regulation. The changes are significant and wide-ranging. They will have different impacts on those airports that are currently "non-designated" and those that are "designated".
- 1.3 This note should be read in conjunction with the relevant legislation mentioned above. If any questions of interpretation should arise the legislation must prevail.

## Changes for Non-designated Airports

- 1.4 On **5 April 2013** economic regulation of non-designated airports under the 1986 Act and the 1994 Order will cease. A non-designated airport is

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1 DfT consultation document: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/28607/consultation-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/28607/consultation-document.pdf)

2 DfT consultation response document: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/128770/consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/128770/consultation-response.pdf)

one to which Part IV of the 1986 Act or Part IV of the 1994 Order applies but which has not been designated for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order. There are currently 55 non-designated airports under the 1986 Act<sup>3</sup> and three non-designated airports under the 1994 Order. These are identified in Appendix 1. For these airports the changes mean that from **6 April 2013**:

- i) A permission to levy airport charges (“a permission”) will no longer be a legal requirement for qualifying airports to be able to levy airport charges on users of the airports.
- ii) Non-designated airports in respect of which a permission was in place before 6 April 2013 will retain their status as statutory undertakings (and their operators as statutory undertakers) for the purposes of planning and other legislation. Permissions in force immediately before 6 April 2013 are treated after that date as if they were certificates granted by the CAA under new section 57A of the 1986 Act or under new Article 2A of the 1994 Order (see (iii) below). Under paragraph 2(6) of Schedule 8 to the 2012 Act, a deemed certificate (or an actual certificate under (iii) below) may only be withdrawn by the appropriate Minister if the Minister considers that the annual turnover of the business carried on at the airport by the airport operator in each of the last two financial years did not exceed £1million. The CAA intends to advise the Government where it considers that the turnover of an operator of an airport in respect of which there is a permission to levy airport charges has fallen below, or is likely to fall below, the £1 million threshold.
- iii) Where the operator of an airport that is not currently subject to Part IV of the 1986 Act or to Part IV of the 1994 Order subsequently has annual turnover of £1 million or more in two of the previous three years it will be able to apply to the CAA for a certificate under new section 57A of the 1986 Act or under new Article 2A of the 1994 Order. A certificate is evidence that the airport operator satisfies the turnover requirement that qualifies it as a statutory undertaker and the airport as a statutory undertaking.

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<sup>3</sup> The 10 airports operated by Highlands and Islands Limited are covered by a single permission to levy airport charges.

- iv) Operators of non-designated airports will no longer have to comply with the “accounts conditions” where the CAA has imposed such conditions using its discretionary powers in section 41(1) of the 1986 Act and Article 32(1) of the 1994 Order. This affects the operators of 29 non-designated airports that are currently subject to accounts conditions. The CAA would not expect airport operators’ accounts for accounting periods ending before 1 April 2013 that are audited and published after 1 April 2013 to comply with the accounts conditions. Consequently, such accounts will not have to disclose the information currently required by the accounts conditions and airport operators will not have to obtain a special report addressed to the CAA from their auditors.
- v) The CAA will no longer expect operators of non-designated airports to provide the standing information it has previously sought under section 73 of the 1986 Act or under Article 48 of the 1994 Order.
- vi) The CAA will no longer be able to consider complaints about conduct by operators of non-designated airports under section 41 of the 1986 Act or under Article 32 of the 1994 Order. Instead, on 6 April 2013 the CAA will become a concurrent competition law authority with the Office of Fair Trading in respect of airport operation services (see Appendix 2 for further information on these services). The CAA will then have powers to enforce domestic and EU competition law in relation to such services. The CAA has published a notice in relation to its new competition powers.<sup>4</sup>
- vii) Operators of non-designated airports with more than five million annual passengers will continue to be subject to the provisions of the Airport Charges Regulations 2011(S.I.2011/2491). Appendix 1 identifies the non-designated airports subject to these Regulations in 2013.

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<sup>4</sup> The CAA’s concurrent competition powers for airport operation services and air traffic services (CAP 1016)

- viii) The provisions in Part 1 of the 2012 Act will apply and any future economic regulation of the airport operator will be under the new licensing regime. This could only occur where the CAA applies the market power test in section 6 of the 2012 Act and makes a positive market power determination under section 7.
- ix) The CAA proposes to continue to levy regulatory charges on airports with more than 500,000 arriving annual passengers in accordance with a charging scheme made under section 11 of the Civil Aviation Act 1982. Following consultation, regulatory charges for 2013/14 were published in the CAA's Official Record Series 5 No 285 on 30 January 2013.<sup>5</sup>

## Changes for Designated Airports

- 1.5 Three airports are currently designated under Part IV of the 1986 Act – Heathrow, Gatwick and Stansted. No airports have been designated under the 1994 Order. For the designated airports:
- a) between 6 April 2013 and 31 March 2014 (the “interim period”):
    - i) A “permission to levy airport charges” (a permission) will no longer be a legal requirement for designated airports to be able to levy airport charges on users of the airports. An order designating the airport will provide the necessary legal cover. Heathrow, Gatwick and Stansted were designated by the Economic Regulation of Airports (Designation) Order 1986 (S.I.1986/1502).
    - ii) All existing conditions imposed on operators of designated airports under Part IV of the 1986 Act will remain in force. These include mandatory price control conditions, mandatory accounts conditions and Public Interest conditions imposed by the CAA following an adverse finding by the Competition Commission.
    - iii) Operators of designated airports should continue to provide the CAA with standing information previously sought under section 73 of the 1986 Act.

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<sup>5</sup> <http://www.caa.co.uk/docs/33/285ERAirportsV2.pdf>.

- iv) The CAA will be able to consider complaints against operators of designated airports under section 41 of the 1986 Act but it will reserve the right instead to apply its new concurrent competition law powers in relation to airport operation services. The CAA will decide in any particular case whether it should use its section 41 powers or its competition powers. The CAA is more likely to use its competition powers where, for example, there is not a reasonable prospect of completing an investigation under section 41 (including any reference to the Competition Commission) by 31 March 2014.
  - v) Operators of designated airports will remain subject to the provisions of the Airports Charges Regulations 2011 as each has over five million annual passengers.
  - vi) The vast majority of the provisions in Part 1 of the 2012 Act will come into force and the CAA will have the powers to make market power determinations, prepare licences etc. However operators of designated airports will be exempt from the prohibition on levying charges without a licence during the interim period.
  - vii) The CAA will continue to levy regulatory charges on the designated airports in accordance with a charging scheme made under section 11 of the Civil Aviation Act 1982. Following consultation, regulatory charges for 2013/14 were published in the CAA's Official Record Series 5 No 285 on 30 January 2013.<sup>6</sup>
- b) from 1 April 2014:
- i) With one exception, all remaining aspects of economic regulation under the 1986 Act of airports currently designated under that Act will cease. The CAA will retain powers to enforce conditions that were imposed under the 1986 Act where a breach of a condition occurred before 1 April 2014. In enforcing conditions, the CAA would expect to follow the broad procedures described in Regulation 13(1) of the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986 while noting that these will have no statutory force after 31 March 2014.

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6 <http://www.caa.co.uk/docs/33/285ERAirportsV2.pdf>.

- ii) A licence granted under Part 1 of the 2012 Act will be required to lift the prohibition in the Act on levying charges at the relevant airport.

1.6 For the avoidance of doubt the transition to the new arrangements under the 2012 Act has no impact on the separate regime of aerodrome licensing by the CAA under Article 211 of the Air Navigation Order 2009. Aerodrome licensing relates primarily to issues of safety.

1.7 If you have questions on any aspect of the transition from the current to the new framework of airport economic regulation please get in touch with Paul Taylor ([paul.taylor@caa.co.uk](mailto:paul.taylor@caa.co.uk) or by phone 020 7453 6232) or Abigail Grenfell ([abigail.grenfell@caa.co.uk](mailto:abigail.grenfell@caa.co.uk) or by phone 020 7453 6243).

**APPENDIX A****Non-designated airports****Non-designated airports under the Airports Act 1986**

<b>Airports</b>		
Aberdeen	Elstree	Manchester *
Biggin Hill	Exeter	Manston
Birmingham *	Fairoaks	Newcastle
Blackbushe	Farnborough	Newquay
Blackpool	Filton	Norwich
Bournemouth	Glasgow *	Oxford
Bristol *	Gloucestershire	Plymouth
Cambridge	Highlands and Islands	Prestwick
Cardiff	Humberside	Retford (Gamston)
Carlisle	Kemble	Shoreham
Coventry	Lands End	Southampton
Denham	Lasham	Southend
Doncaster Sheffield	Leeds Bradford	St Mary's
Dundee	Liverpool *	Sywell
Dunsfold	London City	Tatenhill
Durham Tees Valley	London Heliport	Thrupton
East Midlands	Luton *	White Waltham
Edinburgh *	Lydd	Wolverhampton
		Wycombe Air Park

\* Airports subject to the Airport Charges Regulations 2011 during 2013

## Non-designated airports under the Airports (Northern Ireland) Order 1994

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Airports		
Belfast City	Belfast International	City of Derry

**APPENDIX B****Definitions in the 2012 Act**

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**Airport operation services (section 68)**

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- B1 Services provided at an airport for the purposes of:
- a) the landing and taking off of aircraft;
  - b) the manoeuvring, parking or servicing of aircraft;
  - c) the arrival or departure of passengers and their baggage;
  - d) the arrival or departure of cargo;
  - e) the processing of passengers, baggage or cargo between their arrival and departure; or
  - a) the arrival or departure of persons who work at the airport.
- B2 In relation to (b) servicing includes the supply of fuel and the repair, maintenance and overhaul of aircraft that land at the aerodrome.
- B3 In relation to (c) when a person arrives at, or departs from, an airport other than in an aircraft, the person's arrival or departure takes place on arrival at or departure from:
- a) a passenger terminal that is part of the airport
  - b) the forecourt of such a terminal, or
  - c) a car park that is part of the passenger terminal or has pedestrian access to a terminal.
- B4 In relation to (d) when cargo arrives or departs from an airport other than in an aircraft its arrival takes place when it is first unloaded from the vehicle in which it arrives and its departure takes place when it is loaded on to the vehicle in which it is to depart.
- B5 Airport operation services include:
- a) groundhandling services described in the EC groundhandling directive;
  - b) facilities for car parking;
  - c) facilities for shops and other retail businesses; and

- d) permitting a person to access or use land that forms part of an airport or facilities at an airport for a purpose described in (a) to (f) above

B6 Airport operation services do not include:

- a) air transport services;
- b) air traffic services; or
- c) services provided in shops or as part of other retail businesses.