

The Airport Charges Regulations

Reporting under Regulation 32

CAP 2183

Published by the Civil Aviation Authority, 2021

Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

You can copy and use this text but please ensure you always use the most up to date version and use it in context so as not to be misleading, and credit the CAA.

First published 2021

Enquiries regarding the content of this publication should be addressed to: economicregulation@caa.co.uk

The latest version of this document is available in electronic format at: www.caa.co.uk

Contents

Contents	3
Chapter 1	4
Introduction	4
Structure of this report	5
Chapter 2	6
Our work under the ACRs	6
Notification of airports in scope of the ACRs	6
Provision of information by airport users	7
Compliance with obligations by airport operators	7
Chapter 3	9
Other matters	9
Withdrawal from the EU	9
Parallel regimes	10
Competition and economic regulatory functions	10
Request for an MPD for Manchester Airport	10
Government's periodic review of the ACRs	11

Chapter 1

Introduction

- 1.1 The Airport Charges Regulations 2011 (ACRs) came into effect in 2011 to implement the European Directive (2009/12/EC) on airport charges (ACD) into UK law. Following the UK's exit from the EU, the Airport Charges (Amendment) (EU Exit) Regulations 2018 made some minor changes to the ACRs, but the broad obligations that they create remain in place.
- 1.2 The ACRs cover airports that serve more than 5 million passengers per annum, and:
- set common principles on transparency and consultation for airports in determining charges levied on users;
 - stipulate that airport charges should be non-discriminatory;
 - allow differentiated charges based on relevant, objective, transparent and non-discriminatory criteria; and
 - sets out the CAA's functions to ensure the correct application of this legislation and to report on the exercise of its functions under the ACRs.
- 1.3 We have published guidance providing further information on the application of the CAA's powers under the ACRs.¹
- 1.4 This report covers the period from 1 April 2017 to 31 March 2021. Previous reports are available on our website.²
- 1.5 During the period covered by this report we had the following functions under the ACRs (although circumstances were such that it was not appropriate and/or necessary for us to exercise all of these functions):
- 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);
 - 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);

¹ This is available at www.caa.co.uk/cap1343.

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

- 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 this report

1.6 The rest of this report is structured as follows:

- Chapter 2 reports on our activity against each of the functions in paragraph 1.3; and
- Chapter 3 reports on other matters to do with the UK's exit from the EU and parallel regulatory regimes.

Chapter 2

Our work under the ACRs

Notification of airports in scope of 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 2020, we gave notice to the 13 airports that served over 5 million passengers in 2019 that they would be subject to the ACRs in 2021. In 2021, we gave notice to five airports that had over 5 million passengers in 2020 that they would be subject to the ACRs in 2022.
- 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. We have published this list every year on our website and this information is set it out in Figure 1 below.

Figure 1: Regulated airports in 2019 to 2022

Airports covered by the ACRs	2019	2020	2021	2022
	2017 Pax (m)	2018 Pax (m)	2019 Pax (m)	2020 Pax (m)
Heathrow	78.0	80.1	80.9	22.1
Gatwick	45.6	46.1	46.6	10.2
Manchester	27.8	28.2	29.4	7.0
Stansted	25.9	28.0	28.1	7.5
Luton	16.0	16.8	18.2	5.5
Edinburgh	13.4	14.3	14.7	3.4
Birmingham	13.0	12.5	12.6	2.9
Bristol	8.2	8.7	9.0	2.2
Glasgow	9.9	9.7	8.8	1.9
Belfast Intl	5.8	6.3	6.3	1.7
Newcastle	5.3	5.3	5.2	1.1
London City	4.5	4.8	5.1	0.9
Liverpool	4.9	5.0	5.0	1.3

Source: CAA Airport Statistics

- 2.3 In 2020, due to the worldwide spread of covid-19, passenger numbers at UK airports fell very significantly. The timing and shape for recovery in airport passenger numbers remains highly uncertain. While the ACRs will apply to a smaller number of airports in 2022, we consider that it continues to be important for airport operators to consult users of their airports and to abide by the general behavioural principles underlying the ACRs, particularly in the difficult circumstances facing the aviation industry. We have written to airports and airline associations explaining our views on these matters.

Provision of information by airport users

- 2.4 Under Regulation 7, airport operators can request information from airport users, such as:
- forecasts of an airport user's traffic at the airport;
 - forecasts of the composition and envisaged use of its fleet at the airport;
 - its development projects at the airport; and
 - its requirements at the airport.
- 2.5 If we find that an airport user has failed to provide information to an airport operator, we can impose a financial penalty on the user under Regulation 16.
- 2.6 In the period covered by this report it has not been 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

- 2.7 We have a function under Regulation 20 to investigate whether an airport operator is failing, or has 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.
- 2.8 We have not received any formal 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 has failed to comply, with an obligation under the ACRs during the period of this report. However, during the period covered by this report, we received several informal concerns and enquiries regarding airport operators' compliance with the ACRs, although none were later submitted as formal complaints. In line with our guidance, on receipt of an informal concern or enquiry, we encouraged parties to resolve disputes through dialogue. Where relevant, we also directed parties to the CAA's past

decisions under section 41 (now repealed) of the Airports Act 1986 as an indication of how the CAA might approach a potential investigation under the ACRs.³ This approach appears to have encouraged a pragmatic approach by industry participants.

- 2.9 We have on occasion received representations from airlines, particularly relating to airports subject to licence based economic regulation under the Civil Aviation Act 2012 (CAA12), when an airport changes its structure of charges. Even though economic regulation limits the overall level an airport can charge per passenger, the obligations created by the ACRs and structure of charges can still be important to individual airlines.
- 2.10 At airports that are not subject to licence based economic regulation, as there is usually a higher depth of airport-airline commercial engagement, changes in the structure of airports charges do not normally generate as much interest. Where there are concerns at these airports these tend to be about transparency, consultation and the overall level of charges.
- 2.11 If we are satisfied that an airport operator is failing to comply, or has 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.

³ See CAA decision on investigation into the structure of airport charges levied by Heathrow Airport Limited, March 2014, available at www.caa.co.uk/cap1174; and CAA decision on investigation into the structure of airport charges levied by Gatwick Airport Limited, January 2013, available at <https://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294972630>

Chapter 3

Other matters

Withdrawal from the EU

- 3.1 During the reporting period, the UK left the EU on 31 January 2020 and the transition period ended on 31 December 2020. As a result of the UK's exit, the following amendments were made to the ACRs by the Airport Charges (Amendment) (EU Exit) Regulations 2018 which came into effect on 31 January 2020⁴:
- Regulation 6(4) was removed which required the CAA to consider whether it requires any additional information from an airport operator if there is an inconsistency between the information provided under Regulation 5 and the most recent relevant figures provided by Eurostat. Eurostat is the EU's statistical office and given it may no longer produce figures on UK airports in the UK, it was not considered appropriate to require the CAA to consider information produced by Eurostat;
 - the definition of Eurostat was removed from Regulation 3(1) because the removal of Regulation 6(4) means that this definition is no longer required.
- 3.2 Retained EU case law will remain binding in relation to any question as to the validity, meaning or effect of any retained EU law, unless departed from by the higher Appeal Courts. Directives, such as the ACD, are not intended to form part of domestic law and so the ACD has not been retained in UK law. However, the ACRs refer to the ACD at various points⁵ and so consideration of the ACD will continue to be relevant to a certain extent.
- 3.3 On 31 January 2020, the CAA ceased to be a member of the Thessaloniki Forum of Airport Charges Regulators. This forum is an informal expert group that brings together all EU Independent Supervisory Authorities (EU ISAs), the European Commission, industry bodies (as observers) and a third country supervisory authority (also as an observer). Its functions are to advise the European Commission on the implementation of the ACD and to promote best practices in the economic regulation of airports.

⁴ Explanatory Memorandum for The Airport Charges (Amendment) (EU Exit) Regulations 2018: <https://www.legislation.gov.uk/uksi/2018/1081/memorandum/contents>

⁵ For example, Regulation 2(2) provides that the Secretary of State must, so far as is reasonable, have regard to how the ACD is implemented in EU Member States when carrying out his/her review under Regulation 2(1).

- 3.4 In the period covered by this report up to 31 January 2020, we were active members contributing to the evaluation of the ACD⁶, and to Thessaloniki Forum papers on Market Power Assessments⁷, Selection Criteria for Market Power Assessments⁸, Non-Discrimination (Incentives and Discounts)⁹, Benchmarking¹⁰, and Regulatory Remedies¹¹.
- 3.5 Where appropriate we will continue to engage and cooperate (including with the European Commission and the EU's ISAs) internationally on matters of mutual interest, such as sharing best practice and approaches to the economic regulation of airports.

Parallel regimes

Competition and economic regulatory functions

- 3.6 We can consider airport operator behaviour with respect to airport charges under a number of different statutory regimes. For example, it is possible the same behaviour could potentially be evaluated under different legislation such as:
- discriminatory charging that breaches the ACRs;
 - a breach of an airport economic licence granted under CAA12;
 - a Market Power Determination (MPD) under CAA12; and/or
 - an infringement of the competition prohibitions in the Competition Act 1998.
- 3.7 During the period covered by this report, we have not investigated conduct that could fall under the scope of the ACRs by using other parallel regimes but as noted below have received a request to carry out an MPD.

Request for an MPD for Manchester Airport

- 3.8 In 2019 we received a request from an interested party for us to make a MPD under section 7 of CAA12 as to whether the market power test is met in relation to Manchester Airport. In the case of large airports where the CAA has not previously made an MPD, as is the case with Manchester Airport, the CAA must do so if it receives a request from an interested party. If the CAA determines that

⁶ The EC published its evaluation in 2019 and that is available at:

<https://ec.europa.eu/transport/sites/transport/files/legislation/swd20190289.pdf>

⁷ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=36343&no=1>
and

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=36344&no=2>

⁸ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38501&no=2>

⁹ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38500&no=1>

¹⁰ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=39640&no=1>

¹¹ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=39641&no=2>

the market power test is met, the airport operator in question would be subject to economic regulation by means of an economic licence, as set out in Chapter I of the CAA12.

- 3.9 While some (but not all) of the issues raised by the requesting party appear to be of a nature that could potentially be addressed under the ACRs, the requesting party decided to make an MPD request rather than a complaint under the ACRs.
- 3.10 The CAA announced in August 2020 that we have decided to postpone further work and the formal commencement of this MPD process until at least August 2021. In reaching this decision, the CAA considered its prioritisation principles and took into account, among other things: the unprecedented impact of covid-19 on the aviation industry; and a request from the requesting party that we postpone the formal commencement of the MPD process.
- 3.11 The CAA intends to engage with the requesting party, the airport operator and other interested stakeholders before August 2021 to better understand stakeholders' views on this matter at that time.

Government's periodic review of the ACRs

- 3.12 The Secretary of State is due to review the ACRs during the next reporting year under Regulation 2 of the ACRs. We will assist the DfT with this review, as appropriate.