

Economic regulation of airports: Statement of policy on penalties

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Economic regulation of airports: Statement of policy on penalties under Chapter 1 of the Civil Aviation Act 2012

Civil Aviation Authority

February 2014

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Executive Summary

1. The Civil Aviation Act 2012 (the Act) allows the CAA to impose appropriate and proportionate penalties on:
 - holders of airport licences issued by the CAA under the Act, for breach of licence or breach of an enforcement order: the CAA may impose a fixed amount up to 10% of the licence holder's qualifying turnover and/or a daily amount up to 0.1% of its qualifying turnover;
 - any person who, without reasonable excuse, fails to provide information or documents required by the CAA by notice under its powers in Chapter 1 of the Act: the CAA may impose a fixed amount up to £2m and/or a daily amount up to £100,000; and
 - any person who knowingly or recklessly provides false or misleading information to the CAA or who intentionally alters, suppresses or destroys a document that they are required to provide by a notice issued by the CAA under Chapter 1 of the Act. There is no specified limit on penalties for this offence.
2. The Act requires the CAA to consult on and publish a statement of its policy (the penalties statement) with respect to imposing penalties under Chapter 1 of the Act and determining their amount. The CAA consulted on a draft statement in May 2013.¹ The CAA received five responses to this consultation.²
3. This document sets out the CAA's decision following this consultation and includes the CAA's penalties statement.
4. The penalties statement has followed precedents set by similar statements in other regulated sectors. It explains the criteria by which the CAA will determine whether a penalty is appropriate, based largely

¹ The Consultation can be found at: <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=14781>.

² Responses from Heathrow Airport Limited, Gatwick Airport Limited, Ryanair, the Heathrow LACC & AOC and the Gatwick Airport ACC can be found at: <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15062>

on the Macrory principles on imposing penalties and in particular on the aim to incentivise compliance.

5. The penalties statement also explains the criteria the CAA will use to determine the amount of the penalty, based primarily on the seriousness of the breach or failure to provide information. The CAA will also take into account any aggravating or mitigating factors.

CAA

13 February 2014

CHAPTER 1

Responses to the consultation on the CAA's draft penalties statement and the CAA's final decision

Introduction

1.1 The Civil Aviation Act 2012 (the Act) allows the CAA to impose appropriate and proportionate penalties on:

- holders of airport licences issued by the CAA under the Act, for breach of licence or breach of an enforcement order: the CAA may impose a fixed amount up to 10% of the licence holder's qualifying turnover and/or a daily amount up to 0.1% of its qualifying turnover;
- any person who, without reasonable excuse, fails to provide information or documents required by CAA by notice under its powers in Chapter 1 of the Act: the CAA may impose a fixed amount up to £2m and/or a daily amount up to £100,000; and
- any person who knowingly or recklessly provides false or misleading information to the CAA or who intentionally alters, suppresses or destroys a document that they are required to provide by a notice issued by the CAA under Chapter 1 of the Act. There is no specified limit on penalties for this offence.

1.2 The Act requires the CAA to consult on and publish a statement of its policy with respect to imposing penalties under Chapter 1 and determining their amount. The CAA consulted on a draft statement in May 2013.³ The CAA received five responses to this consultation.⁴ The penalties statement is set out in the Appendix.

³ The Consultation can be found at: <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=14781>.

⁴ Responses from Heathrow Airport Limited, Gatwick Airport Limited, Ryanair, the Heathrow LACC & AOC and the Gatwick Airport ACC can be found at: <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15062>

The penalties statement

Draft statement

- 1.3 The CAA considers that a single statement is suitable for all three types of penalty as the principles and criteria it considers should be the same whenever it decides to impose a penalty. The CAA has published a similar statement regarding its powers under its more general information gathering functions in sections 86 and 87 of the Act for provision of consumer and environmental information.⁵
- 1.4 In preparing the penalties policy, the CAA has had regard to its duties under section 1 of the Act (its section 1 duties), its published enforcement policy⁶, the Macrory principles on imposing penalties⁷ and the penalties statements published by other regulators.
- 1.5 The statement starts with a factual description of the CAA's powers to impose penalties and its procedural obligations. The CAA then separates out the decisions on whether a penalty is appropriate and what the amount should be, in line with its obligations under the Act.

Stakeholder responses

- 1.6 The airports and the airlines were broadly supportive of the CAA's proposals in the draft statement. However, they all considered that the penalties statement did not give enough clarity on the CAA's policies and lacked the detail required to give those people potentially subject to a penalty a clear understanding of how the CAA will give effect to its policy. The airlines thought the statement was open to very wide interpretation and appeared to give the CAA freedom to impose any penalty it liked at the time.

CAA final statement

- 1.7 The CAA notes the comments that the draft statement did not give enough detail. The CAA's statement was designed to set out the criteria that the CAA would use to make its decisions but as there could be a very wide range of incidents, each with its own particular circumstances, it is difficult to be too specific or prescriptive on how

⁵ The consumer and environment information penalties statement can be found at <http://www.caa.co.uk/docs/33/CAP%201143%20Jan%2014.pdf> (see Part 2).

⁶ The CAA's enforcement policy can be found at <http://www.caa.co.uk/default.aspx?catid=2516>.

⁷ See footnote 15 in the penalties statement in the Appendix.