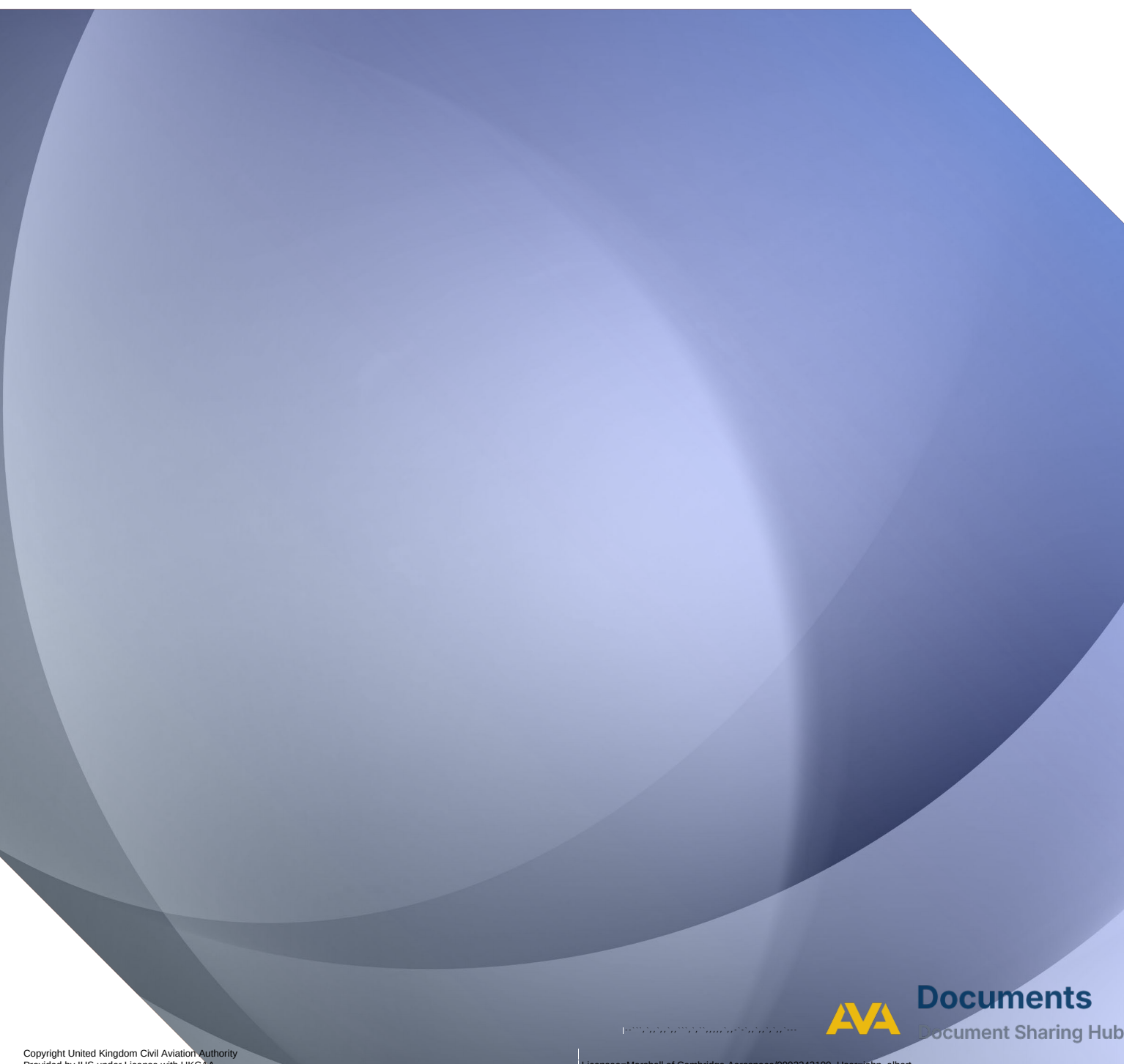


Economic Licensing Enforcement Guidance

CAP 1234



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1. Guidance on enforcement of economic licences

Purpose / Introduction

- 1.1. This guidance document forms part of a suite of CAA enforcement guidance under our overall approach to enforcement.¹ It sets out our approach to enforcing airport economic licences under the CAA122 and air traffic services licences under the TA003 and outlines the legal framework in which our work fits.
- 1.2. We are the regulator of those airport operators that we have determined have passed the market power test⁴ set out in CAA12⁵ and which, therefore, require a licence to charge for the airport operation services (AOS) that they provide. We exercise this role through monitoring and enforcing the conditions of these licences and through licence modifications. This replaces the framework for airport economic regulation under the Airports Act 1986 (AA86). We have a general duty to carry out our functions under Chapter 1 of CAA12 (including enforcement functions) in a manner which we consider will further the interests of users of AOS⁶ and, where appropriate, to promote competition in the provision of AOS. In doing so, we must have regard to a number of other duties.
- 1.3. We are also the regulator of those providers of air traffic services (ATS) that have been granted licences by the Secretary of State under the TA00.⁷ We exercise this role through monitoring and enforcing the conditions of these licences and, where appropriate, through licence modifications to fulfil our duties. Under Chapter 1 of the TA00 we have a primary duty to carry out our functions to maintain a high standard of safety in the provision of ATS. We also have some secondary duties such as furthering the interests of users of ATS,⁸ promoting efficiency and economy by the licence holder and ensuring it can finance its licensed activities.
- 1.4. A full list of our duties under both the CAA12 and the TA00 is set out in Annex A.
- 1.5. In developing our guidance, we have considered our Regulatory Enforcement Policy, as well as the approaches and best practice of other sector regulators. In addition, we have had regard to the Better Regulation Principles to ensure transparent, accountable, proportionate, consistent and targeted decision making.

¹ The CAA's Regulatory Enforcement Policy and associated guidance can be found at www.caa.co.uk/enforcement.

² The airport economic licences are distinct from the aerodrome licences issued under the Air Navigation Order 2009 which relate to safety standards. Separate guidance on enforcement of aerodrome licences can be found at www.caa.co.uk/enforcement. Airports are also subject to the Airport Charges Regulations (2011) and the Airports (Groundhandling) Regulations 1997. We are developing separate guidance on how we will enforce these regulations.

³ Air traffic service providers are also subject to regulation under EU legislation.

⁴ In summary, that the operator has substantial market power in a market, that competition law does not provide sufficient protection from the risk of abuse of that market power and that, for passengers and cargo owners, the benefits of regulating the operator by means of a licence outweigh the costs.

⁵ In 2014 the CAA determined that the operators of Heathrow and Gatwick airports met the criteria and were subsequently granted licences.

⁶ 'Users' in relation to AOS are passengers and those with an interest in cargo (cargo owners).

⁷ NATS (en Route) plc (NERL) is currently the only licence holder under TA00.

⁸ 'Users' in relation to ATS include aircraft owners and operators, airport owners and managers, people travelling in aircraft and cargo owners.

Scope

1.6. This guidance covers four of our activities:

- Enforcement of airport licences under Chapter 1 of the Civil Aviation Act 2012: this applies to holders of airport licences issued by us under the CAA12. We may issue enforcement orders, urgent enforcement orders and penalties.
- **Enforcement of information powers under Chapter 1 of the Civil Aviation Act 2012:** this applies to any person⁹ from whom we request information by notice under section 50 of the CAA12. We can issue penalties for non-compliance and may enforce the duty to comply through the courts.¹⁰
- **Enforcement of licences under Chapter 1 of the Transport Act 2000:** this applies to holders of licences issued by the Secretary of State under section 6 of the TA00. Our enforcement powers extend to the enforcement of licence conditions under sections 20 – 23 of the TA00 and enforcement of duties conferred on the licence holder under section 8 of the TA00 (a TA00 s8 duty). We may issue provisional orders and/or final orders to secure compliance.
- **Enforcement of information powers under Chapter 1 of the Transport Act 2000:** this applies to any person from whom we request information by notice under section 25 of the TA00 for the purpose of licence enforcement action. We may enforce the duty to comply through the courts.

1.7. Our enforcement policy for our information powers under Part 2 'Other aviation matters' of the CAA12 are set out in our publication 'The Civil Aviation Authority's policy for carrying out its information duties under the Civil Aviation Act 2012'.¹¹

1.8. Annex B sets out more details on our licence enforcement powers under the CAA12 and the TA00.

1.9. We define enforcement as any activity that we carry out to seek to remedy a breach, or suspected or potential breach, of a licence or an information request under section 50 of the CAA12 or section 25 of the TA00.

1.10. In this guidance, a breach is a failure to comply with a licence condition or with an information request under section 50 of the CAA12 or section 25 of the TA00.

1.11. Under the CAA12, we have the power to impose penalties on holders of airport licences and any person who fails to comply with an information request. The criteria we will use to determine whether a penalty would be appropriate are set out in the CAA's penalties statement.¹²

⁹ In this guidance, the term 'person' refers to a company or individual who may be subject to enforcement action under the CAA12 or the TA00.

¹⁰ In civil proceedings for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1998.

¹¹ CAP 1143 The Civil Aviation Authority's policy for carrying out its information duties under the Civil Aviation Act 2012 (Jan 2014) can be found at <http://www.caa.co.uk/docs/33/CAP%201143%20Jan%2014.pdf>.

¹² The CAA's Economic regulation of airports: Statement of policy on penalties, February 2014, can be found at: <http://www.caa.co.uk/docs/33/CAP1156Final.pdf>.

Expectations

1.12. In carrying out our enforcement work we will

- behave professionally;
- use a proportionate and risk-based approach – we will take a proportionate approach to a breach where there is no immediate risk to the interests of relevant users,¹³ but where there is evidence of immediate harm we will intervene rapidly by taking the appropriate action;
- take independent, objective, evidence-based decisions – we will consider all pertinent information available to us to inform our enforcement decisions and will ensure that our decisions are robust, objective and well documented, and that they reflect our statutory duties;
- be clear about what we require businesses to do;
- act on information we receive about non-compliance and on our own monitoring;
- follow our established processes in accordance with the relevant legislation; and
- involve licence holders and, where appropriate, other relevant stakeholders in the development of our policies.

1.13. In return, we expect licence holders to comply with their legal obligations as a matter of routine by:

- understanding what those legal obligations are;
- preparing for changes to the law to ensure ongoing compliance throughout any transition – when the law changes or new licence conditions are included in the licence, there is almost always a reasonable notice period before the new obligations come into force and we expect licence holders to use this period to determine how to comply. For example, we do not expect the inflexibility of, or cost of, making changes to IT systems to be a valid excuse for non-compliance;
- talking to us should they face any difficulties in complying with the law or their obligations. However, we do not consider a person's covenants under their financing arrangements relating to breaches of licences or enforcement orders to be a valid reason for us not to take enforcement action; and
- having governance and information management systems that are effective, flexible, resilient and support regulatory compliance to ensure that senior managers are able to secure compliance with their obligations. We do not regard time for internal escalation as a reason to delay action to ensure compliance.

¹³ Relevant users are users of either AOS or ATS as appropriate to the licence we are investigating.

- We will also expect licence holders to manage their contractual relationships effectively and to explore mechanisms in those contracts to secure compliance. Where appropriate, we will encourage the parties to those contracts to resolve disputes between themselves as far as possible before seeking our intervention through licence enforcement.

Stages of enforcement - Prioritisation, escalation and process

- 1.14. Our Prioritisation Principles are set out in a separate document¹⁴. These explain that we will prioritise our enforcement work on the likely impact on relevant users, the strategic and regulatory importance of taking action, the likelihood of a successful outcome and the resources we have available. We will use these principles to decide whether to proceed with enforcement action and to select the most appropriate course of action. In summary, in deciding whether to take enforcement action, we will act in a proportionate manner, prioritising our resources on issues that are most important to, and likely to have greatest impact on, relevant users, in line with our statutory duties and strategic objectives.
- 1.15. We are less likely to take formal enforcement action where the evidence of a breach is weak, if it is trivial, or where there is little or no harm to relevant users. The TA00 states that we should only take action if we consider it appropriate to do so where the licence holder has already taken steps, or has agreed to take steps, to restore compliance and to remedy the effects of the breach. As a matter of policy, we might also take such actions into account when considering issues under the CAA12. In any of these cases, we may choose to follow more informal methods to encourage compliance.
- 1.16. In general, we will take a stepped approach to enforcement, seeking to resolve issues through informal methods in the first instance and escalating to more formal action if necessary. Our choice of approach will be guided by the seriousness of the issue, the flexibility permitted within the legislation and the person's intent and past behaviour. Where appropriate, we may seek to encourage a return to compliance by informal means. It should not, however, be assumed that our first reaction to information received will always be informal. If we believe that there is a serious breach or that urgent action is required, we will not hesitate to take formal action immediately. Figure 1 shows the actions we may take.

¹⁴ The Prioritisation Principles can be found at www.caa.co.uk/enforcement.

Figure 1.



*We may only impose penalties under the CAA12.

- 1.17. We will consider complaints and take them forward in accordance with our Prioritisation Principles. Under the TA00 we must investigate any complaints of a breach of a licence condition or a TA00 s8 duty, unless the complaint is frivolous or vexatious.

Advice and guidance

- 1.18. Where necessary and appropriate, we will provide general information and guidance to make it easier for businesses to understand their obligations and to comply with the law. We will usually publish such information and guidance. Wherever possible, we will involve the industry in developing the content and style of guidance and will distinguish between statutory or licence requirements and guidance that is aimed at improvements above the minimum standards to identify and encourage best practice. We will advise industry if our interpretation of the law changes, for example, by publishing information about European court cases.

Self-regulation and co-regulation

- 1.19. Self-regulation is generally where the industry administers a solution to address issues without formal oversight from the regulator, for example, through contractual methods. As such, it is not relevant to this guidance.
- 1.20. Co-regulation is where the industry and the regulator work together to combine elements of self-regulation with some regulatory oversight where appropriate. We will seek to use co-regulation where we have concerns that the interests of relevant users are not being addressed adequately and where the industry and/or industry organisations are willing to work in partnership with us and agreement can be