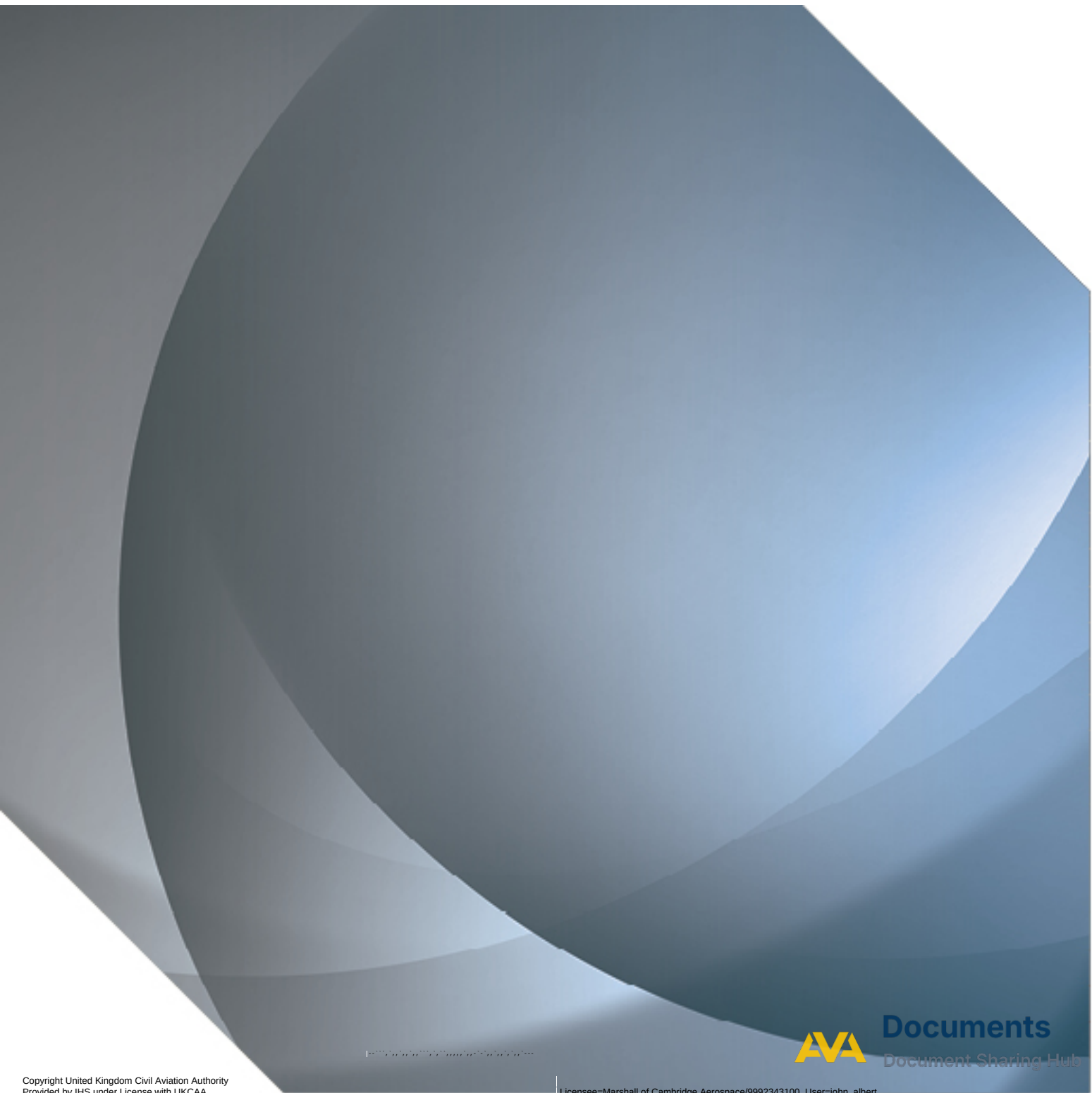


Guidance on the application of the CAA's powers under the Airport Charges Regulations 2011

CAP 1343



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Chapter 1

Introduction

Purpose of this document

- 1.1 The purpose of this document is 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 Airport Charges Regulations 2011¹ (ACRs). The ACRs implement the European Airport Charges Directive² (the Directive) in the UK.
- 1.2 The guidance cannot be comprehensive in that it cannot cover every possible set of circumstances. Instead it aims to set out the general framework we will use so that stakeholders are aware of the processes we will normally follow and the principles to which we will have regard when applying the ACRs. However, when the facts of an individual case reasonably justify it, we may adopt a different approach.
- 1.3 This guidance should not be regarded as a legal authority and is not a substitute for stakeholders reading the ACRs and obtaining their own legal advice.
- 1.4 This guidance replaces the document we issued in December 2010, which set out our Emerging Thinking on how we planned to implement the Directive in the UK³.

About the CAA

- 1.5 We are the UK's specialist aviation regulator. Our regulatory activities range from making sure that the aviation industry meets the highest technical and operational safety standards to preventing holiday makers from being stranded abroad or losing money because of tour operator insolvency. We are the economic regulator for airports and air traffic services and provide advice on aviation policy to the Government. We are also a national competition authority and, for airport operation services and air traffic services, we have the power, concurrently with the Competition and Markets Authority (CMA), to enforce the prohibitions in the Competition Act 1998 (CA98).
- 1.6 Our strategic objectives are:
 - to enhance aviation safety performance;

1 [The Airport Charges Regulations 2011](#).

2 [Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges](#).

3 ['Implementing the Airport Charges Directive in the UK - CAA Emerging Thinking' \(December 2010\)](#).

- to improve choice and value for aviation consumers;
- to improve environmental performance;
- to ensure civil aviation organisations operating in the UK maintain security arrangements which address the risk to their operations and the public; and
- to ensure that we are an efficient and effective organisation which meets better regulation principles and gives value for money.

1.7 We follow Better Regulation principles so we are committed to regulating in a way that is transparent, proportionate, targeted, accountable and consistent. When enforcing the ACRs we will follow our Enforcement Policy⁴.

The CAA's role under the Regulations

- 1.8 The ACRs set out common principles for the relationship between airport operators and airport users as required by the Directive. These relate to the levying of airport charges at UK airports which serve more than five million passengers in a year. In particular, the ACRs:
- set minimum standards for the provision of information;
 - from airport users (those carrying passengers, mail or freight by air) to airports (on their future requirements); and
 - from airports to airport users (on the basis on which they calculate and set their charges, the proposed amount of the charges and their actual charges);
 - require airports to consult airport users on their proposed level of charges, take the airport users' views into account, and respond to any objection from an airport user; and
 - require airports to set non-discriminatory charges and to fairly allocate scarce capacity.
- 1.9 We have been nominated as the UK's Independent Supervisory Authority (ISA) for the purposes of the Directive and are responsible for enforcing the ACRs.
- 1.10 When carrying out our functions under the ACRs, we are required:
1. to further the reasonable interests of users of airports within the United Kingdom (users include airlines, general aviation, and passengers⁵);
 2. to promote the efficient, economic and profitable operation of such airports;
 3. to encourage investment in new facilities at airports in time to satisfy anticipated demands by the users of such airports; and

4 ['Civil Aviation Authority - Regulatory Enforcement Policy'](#)

5 As our statutory duties under the ACRs are our statutory duties in the Airports Act 1986, the definition of users in our duties is that in the Airports Act and not that in the ACRs.

4. to impose the minimum restrictions that are consistent with the performance by the CAA of its functions.

- 1.11 We also have to take into account such of the international obligations of the UK that have been notified to us by the Government⁶.
- 1.12 The ACRs import the CAA's duties that are found in section 39 of the Airports Act 1986 and Article 40 of the Airports (Northern Ireland) Order 1994. They differ from our duties in the Civil Aviation Act 2012 (CAA12), under which we have a general duty to further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operational services. Our duties under the ACRs, give equal weight to the interests of airlines, some general aviation and passengers, whereas our CAA12 duties give primacy to the interests of passengers and those with rights in air cargo.
- 1.13 Airports and airport users may complain to us where they consider the provisions of the ACRs have been breached. As the UK has made use of the opt out in Article 6(5) of the Directive we are not responsible under the ACRs for dispute resolution between airports and users⁷.
- 1.14 When enforcing the ACRs, we must perform our functions with a view to ensuring that to the extent possible, changes to the system or level of airport charges are agreed between airport operators and any airport user who would be liable to pay the charges⁸.
- 1.15 We do not consider that the ACRs should be interpreted to create a quasi-regulated structure for airports that are not licensed under CAA12.
- 1.16 We must also provide information, advice and assistance⁹. This guidance is an example of such advice. However, unless we decide to investigate a complaint

6 On 16 November 2007 the Government notified us of the following international obligations as they relate to the imposition of charges on airlines:

- Article 15 of the Chicago Convention;
 - air services agreements in force between the European Union and its Member States and any third country or countries; and
 - air services agreements in force between the UK and any third country or countries.

7 Article 6(5) of the Directive allows Member States not to require their ISA to carry out a dispute resolution role if there is a mandatory process under national law by which:

- the ISA examines on a regular basis, or in response to requests from interested parties, whether airports are subject to effective competition; and
- whenever warranted by the investigation, airport charges, or their maximum level, are determined or approved by the ISA.

8 Regulation 28(3)

9 Regulation 28(4)

under the ACRs, we will not provide opinions on whether there appears to be a breach of the ACRs in a particular case. To do so would prejudice our formal role in deciding whether an airport operator (or user) has breached the ACRs.

- 1.17 Finally, the ACRs give us information gathering powers. More information on our information powers, and the way we handle confidential information is set out in Chapter 9.

Structure of this document

- 1.18 The document is divided into the following chapters and annexes:
- Chapter 2 - Scope of the ACRs
 - Chapter 3 - Parallel regimes
 - Chapter 4 - Obligations on airport users
 - Chapter 5 - Obligations on airport operators - Information, consultation and publication
 - Chapter 6 - Obligations on airport operators - Non-discriminatory pricing and service provision
 - Chapter 7 - Investigation process and decision making
 - Chapter 8 - Imposing a compliance order on airport operators
 - Chapter 9 - Information gathering and disclosure
 - Annex A - Process for imposing a penalty on airport users and appealing a penalty
 - Annex B - Managing Aviation Noise - Good practice principles for airports to use when setting airport charges to encourage quieter flights
 - Annex C - Information required in a written, reasoned complaint.

Chapter 2

Scope of the ACRs

Introduction

2.1 This chapter describes:

- which airports are subject to the ACRs;
- what charges are covered by the ACRs; and
- who are regarded as airport users under the ACRs.

Airports subject to the ACRs

2.2 Under Regulation 4(1), an airport is subject to the ACRs in a particular calendar year if more than five million passengers used the airport in the calendar year two years before. For example, airports are within the scope of the ACRs in 2015 if they had more than five million passengers in 2013.

2.3 Under Regulation 6(2), by 1 March each year, or as soon as practicable after, we publish a list of airports that will be subject to the ACRs in the following year. In February 2015 we published a list of the airports covered in 2016. The lists of airports subject to the ACRs in the current and following years are set out on our website¹⁰. We inform airport operators of their inclusion in the list before we publish it.

2.4 We also publish monthly and annual airport statistics on our website¹¹. We derive the annual list of airports described above from this data.

Airport charges

2.5 The following are airport charges subject to the obligations in the ACRs:

- landing charges;
- take-off charges;
- airport air navigation service charges;
- aircraft parking charges;
- passenger processing charges (such as Passenger Load Supplements); and
- passenger security charges¹².

10 At <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14467>

11 At <http://www.caa.co.uk/default.aspx?catid=80&pagetype=88&pageid=3&sglid=3>

2.6 The ACRs specifically exclude the following items from the definition of airport charges:

- penalties paid under noise control schemes;
- penalties under schemes established by managers of aerodromes;
- charges for airport installations necessary for groundhandling;
- charges for chargeable air traffic services;
- charges for services to passengers with reduced mobility; and
- charges for en route and terminal air traffic services under the European common charging scheme.

Airport users

2.7 The definition of an airport user in Regulation 3(1) is a person responsible for the carriage of passengers, mail or freight by air to or from the airport. We consider that this definition encompasses general aviation as well as commercial aviation. Airports should note, therefore, that general aviation users are entitled to receive the information airports are obliged to provide under the ACRs and to expect airport operators to have regard to their consultation responses. Nonetheless, we will expect to see airport operators using a proportionate approach to avoid imposing an unnecessary burden on users.

2.8 The ACRs apply to the relationships between airports and the users of the airports concerned. We consider that airports may use appropriate tools to identify those parties who are their users in order to determine the scope of their obligations under the ACRs. These may, for example, include, identifying a user as a party which has actually used the airport in question in the previous 12 months.

12 This definition of airport charges is the same as was set out in the Airports Act 1986 and is also in line with the charges considered to be airport charges in standard industry documents (such as ICAO's policies on charges for airports and air navigation services (Doc 9082) and in airport charges comparisons).

Chapter 3

Parallel regimes

- 3.1 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 as follows:
- discriminatory charging that breaches the ACRs;
 - a breach of an airport economic licence granted under CAA12¹³; and
 - an abuse of a dominant position under CA98.
- 3.2 It is important that we are clear on how we will use our resources to look at behaviour that is potentially subject to different regulatory regimes. A key principle we would adopt in this respect is that we intend to avoid investigating the same facts more than once. Our approach to dealing with complaints is set out below.

Where we have not started any investigation

- 3.3 In the event of receiving a complaint under the ACRs from a person on whom airport charges are levied, or from another airport operator which claims its business has been harmed, we must investigate it. We would, therefore, deal with that complaint under the ACRs unless we thought that it had been incorrectly submitted, in which case we would discuss this with the complainant.
- 3.4 In the event of receiving a complaint under competition law or as a licence breach, on a matter we thought was best dealt with under the ACRs, we may advise the complainant to withdraw its complaint and resubmit it under the ACRs. We would reserve our right to deal with such complaints using our prioritisation principles¹⁴.
- 3.5 If we receive a complaint from any other person which we are not required to investigate under the ACRs, we would assess whether to investigate it using our prioritisation principles. If the airport operator's behaviour could also, potentially, be prohibited under UK and European competition law or be a potential licence breach, if we decided to investigate, we would decide which one regime we would use to undertake any investigation and apply only one regime.

13 We licence airport operators that pass a market power test set out in CAA12. Currently, we have issued licences to Heathrow Airport Limited and Gatwick Airport Limited.

14 ['Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation Work' \(May 2015\)](#)