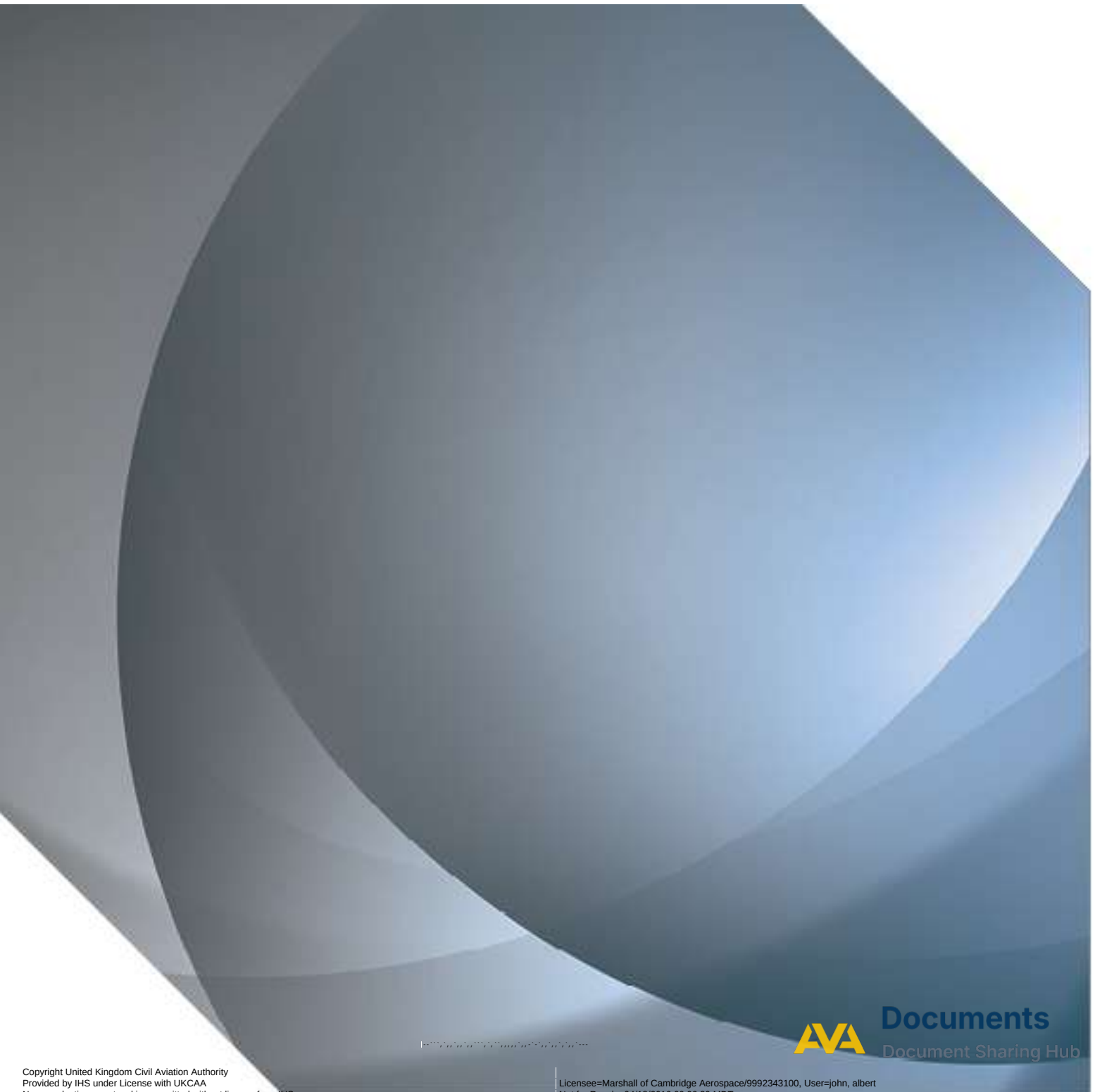


Guidance on the application of the CAA's powers under the Airports Charges Regulations 2011: Consultation response document

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1. The Airport Charges Regulations 2011 (ACRs)¹ are secondary legislation which transpose the Airport Charges Directive (the directive)² so that it applies in the UK. They apply to all airports with more than 5 million passenger movements per year. There are currently nine such airports in the UK:
 - Heathrow;
 - Gatwick;
 - Manchester;
 - Stansted;
 - Luton;
 - Edinburgh;
 - Birmingham;
 - Glasgow; and
 - Bristol.
2. The ACRs set out certain obligations on airports and users with regard to exchanging information and on airports with regard to consultation on airport charges. The ACRs also require airports to set non-discriminatory charges and to fairly allocate scarce capacity. Since the repeal of Section 41 of the 1986 Airports Act, the ACRs are the main sector-specific legislation on this subject.
3. The CAA is the nominated national independent supervisory authority under the ACRs responsible for investigating complaints about breaches of the ACRs. If we find a breach, we can issue a compliance order, but are not obliged to. A compliance order can require the airport to change its behaviour and award damages to those who have suffered loss because of the infringement. Whether we issue an order or not, those who consider they have suffered as the result of an infringement can take Court action for damages.

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](#).

4. In April 2015, we launched a consultation on draft guidance to advise airport operators, airport users and other stakeholders of how we intend to interpret, monitor and enforce the obligations on airport operators and airport users, to inform stakeholders of what to do if they consider there has been a breach of the ACRs, and how we will handle complaints. The deadline for responses to the consultation was 30 June 2015. In order to give stakeholders more time to respond, this deadline was later extended to 7 July 2015.
5. We received nine responses from:
 - Birmingham Airport;
 - Bristol Airport;
 - Edinburgh Airport;
 - Gatwick Airport;
 - Heathrow Airport;
 - Manchester Airport Group (MAG);
 - Virgin;
 - IATA (KLM mentioned it agreed with IATA's response); and
 - James Chan (Aircraft Owners and Pilots Association).
6. This document summarises responses to the consultation and gives our views on the responses, including whether they have contributed to us amending the draft guidance.
7. The [responses](#) are available on our website.

Our approach to the ACRs

8. In the consultation we set out our approach to the ACRs. We said that in our view promoting competition was usually the most effective way to improve outcomes for passengers and airport users. Our approach, therefore, was to seek to give airports and users the confidence to reach commercially negotiated outcomes where these are mutually beneficial and do not discriminate between users.
9. In the draft guidance we reminded dominant airports that they have a special responsibility to ensure that their conduct does not distort competition.
10. We did not consider that the ACRs should be interpreted in a way which would create a quasi-regulated structure for other airports. For example, where airports are not regulated by licence we would not mandate a level of transparency similar to that at the licensed airports.

11. In addition, where we find a breach of the ACRs, we noted that we were unlikely to issue a compliance order unless we judged that the breach had an impact on competition and thereby an impact on consumers.
12. Our approach to the details of the ACRs, stakeholder responses to our consultation, our view on the responses, and whether they have caused us to change our guidance are set out in more detail below.
13. Our [final guidance](#) is on our website.

Definition of airport user

14. In the ACRs, an airport user is defined as "in relation to any airport, a person responsible for the carriage of passengers, mail or freight by air to or from the airport".
15. We asked in our consultation how we should interpret the definition of airport user in the ACRs. This definition includes airlines operating commercial services whether scheduled, charter services, all-cargo or mail flights. We said, in our view, it would also include some general aviation (GA), such as business aviation, air taxis and air ambulances.

Responses

16. Generally, respondents agreed with our interpretation. Bristol thought there should be clarity over flight training, and that it might be appropriate to differentiate users by size (either aircraft size or percentage of airport's business). AOPA said that pilots (private and commercial) who are not carrying passengers or cargo should be considered to be users.
17. While agreeing with our interpretation, IATA mentioned that GA traffic was neither significant to, nor drove capital investment at, airports covered by the ACRs. It thought that while transparency should be extended to GA, a balance was required in consultations so that they were not carried off track for example by business aviation users representing a small share of traffic and airport revenue.
18. Virgin mentioned that the ACRs were directed in relation to all primary users at an airport including GA.
19. We consider that Heathrow's comments (discussed below) that GA users should only be entitled to receive information under the ACRs if they have used the airport in the past year is relevant here as it essentially raises the issue of which parties can be considered to be users of the airport in question.

CAA view

20. We are required to recognise the rights of airport users as defined under Regulation 3(1) of the ACRs. We consider that any user, whether regarded as GA or not is a user under the ACRs. However, a party that has not used the airport in question cannot be considered to be a user of that airport.
21. Notwithstanding our view that all users are entitled to the benefits of the ACRs, we note and agree that GA traffic may not be significant or drive investment at an airport. We consider that its needs may be different to those of commercial traffic. As airports should tailor their consultations to the needs of particular users they should consider how best to do so, including holding separate meetings with GA users to those with commercial airlines, when that would be appropriate.

Changes to guidance

22. We have amended paragraph 2.7 to say that the definition 'encompasses general aviation as well as commercial aviation'. Previously it said 'some general aviation' with examples of GA that would be regarded as users.
23. We have added a new paragraph, 2.8, to clarify the guidance to make it clear that a party that has not used the airport in question cannot be considered to be a user of that airport.

Information Provision

24. The ACRs require users to provide airports with details of their expected use of the airport each year and airports to provide users with a range of financial and operational information that allows them to see how airport charges are set.
25. In 2014, the European Commission, reporting on the implementation of the Directive, found that users were generally satisfied with transparency at UK airports and the consultation procedure at larger airports in the UK. Given this general satisfaction with information provision in the UK, in our draft guidance we said we did not intend to provide detailed guidance on how airports and users should exchange information and the detail of information required. In particular, we did not intend to provide pro-formas or templates that airports and users should use. (We had previously provided a template in our Emerging Thinking document published in 2010³.)
26. We were mindful that if we specified the information required and the arrangements for the exchange of information too precisely, we would risk

3 [Implementation of the Airport Charges Directive in the UK - CAA emerging thinking \(December 2010\)](#)