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Chapter 1

Executive Summary

1.1 Ground handling services are subject to the Airports (Groundhandling) Regulations 1997 ("the Regulations") that implemented the EU directive of 1996 on ground handling ("the Directive"). The Regulations give the CAA a number of decision-making functions which affect access to the ground handling market at airports and consequently the supply of handling services.

- Applications from airports to limit access to the ground handling market by third party suppliers and self-handling airport users (and in some cases the identity of permitted handlers).
- Appeals from interested parties in relation to: (i) the allocation of space at airports for the carrying out of ground handling activities, (ii) the charges levied for access to airport facilities that are necessary for those activities, (iii) the conduct of regular consultation by airports with airport users and ground handlers on the organisation of the provision of ground handling services at the airport.
- Applications from airports to reserve to themselves the management of centralised airport infrastructures used for ground handling.
- Applications from airports to prohibit handlers that do not comply with airports' local rules imposed by them to ensure the proper functioning of the airport.
- Appointment of an Independent Examiner to check that an entity providing both ground handling services and other services maintains separate accounts for its different activities.

- 1.2 More detail on these functions is set out in this document. We have also published on our website some background information about the CAA's regulatory role in ground handling.¹
- 1.3 It is now 20 years since the Directive was passed and over 15 years since we have been asked to limit the number of ground handling suppliers at any UK airport. In the last five years or so, however, we have considered two appeals about ground handling access charges at one airport.
- 1.4 The purpose of this document is to seek views and relevant factual information from those with an interest in the provision of ground handling services at UK airports, in particular airports, airport users ground handling suppliers, and those representing passengers and shippers of cargo.
- 1.5 This document is not a draft policy statement for consultation but an evidence gathering exercise. In due course we plan to publish for consultation draft guidance on the CAA's role under the Regulations which will draw on the views and information provided in this request for information.
- 1.6 We are looking for facts, examples and information and stakeholders' views on the factors we should take into account, and how we should assess them in different circumstances, when carrying out our functions described in this document.
- 1.7 We are not, in this document, inviting specific complaints or representations about the supply of ground handling services at individual airports. Most complaints, in particular those alleging a failure to comply with the requirements of the Regulations on market access, would need to be addressed to airports and thereafter can only be pursued through the courts rather than with the CAA.
- 1.8 However, we are aware that some stakeholders have concerns about the impact on them of current ground handling practices at some UK airports.

¹ <http://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Airports-Groundhandling-Regulations-1997>

For example, we acknowledged in our In Focus publication on 24 February 2016 that some aircraft operators were apparently being refused the ability to provide handling services for their own flights and that the airports concerned had not applied to the CAA for authority to do so². In that publication we encouraged airports to move into compliance with the freedoms and aims of the Regulations but highlighted that we wanted to see all stakeholders giving full consideration to the security and safety implications as they do so.

- 1.9 The document also explores the purpose behind the EU Directive (implemented by the UK Regulations), namely to increase competition and choice in the supply of ground handling services with the aim of *"reducing the operating costs of the airlines and improving the quality of service provided to airport users"*³. An area we are seeking views is around the extent which the CAA, using its functions under these Regulations, should accept constraints to competition in the interests of safety, security or for any other reasons. This is important since the CAA is also responsible for enforcing the UK's and EU's safety and security regulations at UK airports. We also see groundhandling as an essential component of the resilience of the airport with respect to reliability and dealing with extreme circumstances.

Security

- 1.10 The CAA is responsible for monitoring airports' and airlines' implementation of aviation security regulation in the UK; and these entities may, in turn, employ ground handling providers. All ground handling providers (whether self handlers or third-party handlers), and no matter how many operate at an airport, must comply with security regulations through their contractual arrangements with airlines.
- 1.11 The environment at UK airports has changed significantly since aviation security regulations were first implemented in the 1980s, as new or revised measures have been introduced to further mitigate the threat from

² <http://www.caa.co.uk/CAP1358>
³ Recital 5 to the Directive.

terrorism. Ground handling is an essential part of the operations flow at an airport and in itself must contribute to the overall integrity of an airport's security, particularly as the majority of ground handling activities are carried out in security restricted areas.

Safety

- 1.12 With regard to safety, we are aware that ground handling activities, especially airside at airports, have a high potential to influence the safety outcomes of the day to day operation of an airport. Currently the CAA has no direct regulatory oversight responsibilities for safety of functions carried out by ground handling service providers. However we indirectly regulate this as we oversee the way that airlines manage the safety of ground operations including those services contracted to ground handlers.
- 1.13 A CAA review of ground handling safety is currently under way to determine whether any regulatory intervention is required (for example setting minimum standards and/or to require minimum competence via a licensing scheme) and to inform discussions with the European Aviation Safety Agency ahead of planned safety regulation of the sector at an EU level.
- 1.14 Stakeholders may already have participated in conversations with the CAA on the factors they consider influence the safety of ground handling operations and therefore the impact of ground handling on safety. We would nevertheless be grateful to receive a response to this Request for Information from those stakeholders as well. The CAA's conclusions in the safety review work will influence the way in which the CAA will carry out those aspects of our role under the Regulations where it is necessary to consider whether it is appropriate to limit competition in handling on grounds of safety.

Resilience

- 1.15 Ground handling is an essential component of the operation of the airport and one of the determinants of reliability and resilience to extreme events. Ground handling issues have, for example, been a cause of delay in

recent summers at some airports and there are some considerations around limiting when airlines can switch ground handlers (i.e. to avoid switching at busy times). We are intending to put out a call for evidence on the wider question of airport resilience in June 2016. This exercise will also take account of any relevant points made in response to this information request. We invite stakeholders to highlight issues that are particularly relevant to the question of resilience in their responses to this document.

Responses to this document

- 1.16 We are inviting responses to this document by 28 June 2016. They should be sent preferably by email to economicregulation@caa.co.uk or by post to:

Rod Gander
Consumers and Markets Group
Civil Aviation Authority
CAA House
45-59 Kingsway

Further details can be found in Chapter 13 including how we will handle any confidential information we might receive.

- 1.17 Where stakeholders need further information on the safety and security requirements for ground handlers, which are not included in this document, please contact us using the details above.

Chapter 2

Introduction and background

Summary of ground handling activities

2.1 Ground handling is a term that describes collectively the wide range of services and facilities provided on the ground at airports for aircraft, for aircrew, for passengers and their baggage, and for cargo, all of which support the operation of air services.⁴ These include highly technical services such as aircraft maintenance, fuel and oil services and freight handling as well as services for passengers including passenger check-in, supplying on-board catering provisions, baggage handling and surface transport at the airport. Some services are provided in landside areas of an airport (for example, within the terminal before security screening) while others are conducted airside. Many handling services, particularly those provided airside, are an integral part of an airport's security system.

2.2 Ground handling services can be supplied either as a package of services (typically loading, marshalling, pushback, passenger handling) or individually (typically fuel, catering) and by a variety of suppliers:

- by specialist ground handling suppliers;
- by airlines for other airlines and their passengers;
- by airports;
- or by airlines/pilots for their own flights.

The first three of these are described as "third party handling" while the fourth is termed "self-handling".

2.3 There are three parties involved in the supply of ground handling services at an airport - the airport which allows access to its property by ground

⁴ In this document we use the generic term "ground handling". In EU and UK legislation this is referred to as "groundhandling".

handlers typically on terms set out in authorisations or licences issued by the airport; the airlines (and other aircraft operators) at the airport for whom ground handling services are supplied; and the ground handling suppliers who are contracted by individual airlines to provide services to them. The airport has no direct say in the terms of the contract between an airline and its ground handler (for example in relation to price or service quality) nor does an airline have a direct say in the terms on which its chosen handler is allowed access by the airport to its ground handling facilities.

Origins of the groundhandling directive

- 2.4 Before 1996 ground handling was not subject to separate economic regulation. However, competition law did apply to the supply of ground handling services and continues to do so. During the 1990's there were a number of complaints to the European Commission about practices at some of the most significant airports in Europe. Airlines argued that they experienced relatively high prices and sub-optimal efficiency and service quality. Two key complaints from this period related to the ground handling monopoly at Frankfurt Airport and Paris Charles de Gaulle's charges on suppliers of catering services. In both cases the airports were alleged to have favoured their own ground handling operations.
- 2.5 Following these complaints, the EU decided to legislate in this area. It did so through the 1996 Directive on Access to the Groundhandling Market at Community Airports (96/67/EC)⁵. The stated purpose of the Directive was to increase competition and choice in the supply of ground handling services with the aim of *"reducing the operating costs of the airlines and improving the quality of service provided to airport users"*. The European

⁵

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0067&qid=1448372813471&from=EN>

Commission decided the competition cases after the Directive came into force. It found that both airports had abused a dominant position.⁶

- 2.6 The Directive established the general principle of freedom of access to the market for both third party handlers and for self-handling airport users. However, it also recognised that for certain categories of handling and depending on the size of the airport it should be possible for Member States to limit the number of parties providing ground handling services where this is warranted.
- 2.7 The Directive was implemented in the UK by means of the Airports (Groundhandling) Regulations 1997 (SI 1998/2389)⁷ and the Airports (Groundhandling)(Amendment) Regulations 1998 (SI 1998/2918)⁸. A consolidated version of the Regulations can be found on the CAA's website.⁹
- 2.8 In implementing the Directive the UK government had two particular objectives in mind. The first was that the implementing rules should not seek to interpret either the intent or the meaning of the Directive. To a great extent, therefore, the Regulations simply repeat the text of the Directive. The second objective was that where the Directive gave discretion to Member States to intervene in the ground handling market, the UK would only implement those aspects where there was a compelling case to do so. The aim here was to make sure that the key objectives of the Directive would be achieved but with the minimum of regulatory intervention.
- 2.9 One area where the Directive gave discretion to Member States was in relation to the national licensing of ground handling suppliers. While a number of Member States subsequently introduced a system of licensing

⁶ Commission decision 98/190/EC of 14 January 1998 relating to a proceeding under Article 86 of the EC Treaty (IV/34.801 FAG – Flughafen Frankfurt/Main AG). Commission decision of 11 June 1998 relating to a proceeding under Article 86 of the EC Treaty (IV/35,613 – Alpha Flight Services/Aéroports de Paris).

⁷ <http://www.legislation.gov.uk/ukxi/1997/2389/contents/made>

⁸ <http://www.legislation.gov.uk/ukxi/1998/2918/contents/made>

⁹ <http://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294978850> - This has been prepared by the CAA for information and should not be relied on for any legal purposes.

of ground handling suppliers, for example Ireland, the UK government elected not to do so.

2.10 In contrast to other areas of CAA regulation, there is no overriding principle or duty in the Regulations to guide the CAA in how it carries out its functions and exercise its discretion. For example, the CAA's general duties in section 4 of the Civil Aviation Act 1982 do not apply. Thus far, we have therefore been guided by what we consider to be the purpose of the EU Directive and the policy and purpose of the Secretary of State when the UK Regulations were implemented. Given that is the case, one purpose of this Request for Information is to seek views on any overriding principles stakeholders consider the CAA should apply when carrying out its functions.

2.11 We are issuing this Request for Information mainly in relation to those of our functions under the Regulations that require the CAA to consider:

- the factors that might justify limiting access to the ground handling market;
- whether the terms of access to ground handling facilities meet the stated criteria; or
- whether a ground handling supplier should be removed from an airport.

2.12 We are doing so as a first stage in the development of guidance on how we apply the Regulations. Our aim is to establish clear and transparent policies for each of our statutory functions that affect stakeholders, including airports, airlines and their passengers, other aircraft operators, and ground handling suppliers. We will take into account the information you provide to us before we publish draft guidance.

Structure of the document

2.13 The rest of the document is structured as follows:

- Chapter 3 - Access to the ground handling market: a Factual Overview.
- Chapter 4 - Compliance with the Regulations.
- Chapter 5 – Scope of the Regulations
- Chapter 6 - Applications to limit the number of third party handlers.
- Chapter 7 – Applications to limit the number of self handling airport users.
- Chapter 8 - Appeals in relation to allocation of space, access charges and consultation.
- Chapter 9 – Applications to prohibit a handler from an airport
- Chapter 10 - Applications to reserve the management of centralised infrastructures.
- Chapter 11 - Separation of accounts by suppliers of ground handling services.
- Chapter 12 - CAA processes and procedures.
- Chapter 13 - How to respond and next steps.
- Appendix A – List of ground handling services in the Directive.
- Appendix B – Traffic at UK airports in 2015.

Chapter 3

Access to the ground handling market: an overview of the CAA's functions

Summary

3.1 This chapter provides further details of:

- the rights and obligations of airport operators in respect of third party handling;
- the self-supply of handling services by airport users;
- access to ground handling facilities;
- the prohibition of handlers; and
- financial accounting.

3.2 The nature of these rights and obligations often depends both on the size of the airport (measured by passenger numbers or the volume of freight handled) and into which of two sets of handling the particular handling service falls.

3.3 There are 11 broad categories of ground handling services.¹⁰ These can be divided into two sets that are treated in different ways under the Regulations.

3.4 The first set of handling services includes the following categories:

- Ground administration and supervision;
- Passenger handling;

¹⁰ **Appendix A** repeats the Annex from the Directive and specifies the handling services within the scope of 11 broad categories and the particular services within each category. This was initially based on the standard IATA Ground Handling Agreement and has not been revised since 1996.

- Aircraft services;
- Aircraft maintenance;
- Flight operations and crew administration;
- Surface transport, and
- Catering services.

3.5 The second set of handling services includes the following categories, which comprise many (but not all) of the services provided in airside areas of the airport:

- Baggage handling;
- Freight and mail handling;
- Ramp handling; and
- Fuel and oil handling.

Third party handling

3.6 **Table 1** below summarises the position under the Regulations in terms of handling freedoms and the ability of airports to limit those freedoms for the supply of third party handling.

Table 1: Third Party Handling freedoms and limitations

Qualifying airports	Airports up to 2 million passengers or 50,000 tonnes of freight per annum	Airports above 2 million passengers or 50,000 tonnes of freight per annum
Handling services in Set 1	No general freedom of access. Airport decides policy on handling.	General freedom of access but airport may limit to no fewer than two suppliers if approved by the CAA and with a time limited exemption from the European Commission.

Handling services in Set 2	No general freedom of access. Airport decides policy on handling.	General freedom of access but airport may: (a) limit to no fewer than two suppliers if approved by the CAA; or (b) limit to one supplier if approved by the CAA and with a time limited exemption from the European Commission.
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3.7 Should we approve a limit for the number of third party handlers at an airport with more than 2 million passengers the airport must then conduct a tender process to select the handlers. The airport will normally make the selection. However, any person who is "aggrieved" by the airport's selection of handlers may appeal to the CAA. Where an airport provides ground handling services itself, it is allowed to be one of the handlers (without having to go through the selection procedure), and we select the other handlers up to the limit. Our selection of handlers is subject to appeal to the Secretary of State by an "aggrieved" person. In all cases, a supplier of ground handling services is to be selected for a period not exceeding seven years.

Self provision of handling services

3.8 **Table 2** below shows for self-handling the equivalent information as in Table 1.

Table 2: Self-handling freedoms and limitations

Qualifying airports	Airports up to 1 million passengers or 25,000 tonnes of freight per annum	Airports above 1 million passengers or 25,000 tonnes of freight per annum
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Handling services in Set 1	General freedom to self handle but airport may reserve to a limited number of users if approved by the CAA and with a time limited exemption from the European Commission.	General freedom to self handle but airport may reserve to a limited number of users if approved by the CAA and with a time limited exemption from the European Commission.
Handling services in Set 2	No general freedom of access. Airport decides policy on self-handling airport users.	General freedom to self-handle but airport may: (a) limit to no fewer than two named self-handling users if approved by the CAA; or (b) limit to one self handling user or ban self handling if approved by the CAA and with a time limited exemption from the European Commission.

3.9 The self-handling freedoms described in Table 2 are available to "airport users" who are defined in the Regulations as:

"any person responsible for the carriage of passengers, mail or freight by air from or to the airport in question".

This same definition appears in near identical terms in a number of pieces of EU aviation legislation.

3.10 Should we decide to approve an application to limit the number of self-handling airport users we must then in all cases select those able to self-handle on the basis of "relevant, objective, transparent and non-discriminatory" criteria.