

SCHEDULES

SCHEDULE 10

Section 76

REGULATION OF OPERATORS OF DOMINANT AIRPORTS: TRANSITIONAL PROVISION

PART 1

REGULATION

Definitions

- 1 In this Part of this Schedule—
- “the 1986 Act” means the Airports Act 1986;
 - “the 1994 Order” means the Airports (Northern Ireland) Order 1994 ([S.I. 1994/426 \(N.I. 1\)](#));
 - “the commencement day” means the day on which section 3 of this Act comes into force;
 - “designated airport” means an airport (as defined in the 1986 Act or the 1994 Order) which is designated for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order;
 - “the interim period” means the period beginning with the commencement day and ending with 31 March 2014.

Market power determinations: designated airports

- 2
- (1) This paragraph applies where, immediately before the commencement day, an airport is a designated airport.
 - (2) The market power test is to be treated as met on the commencement day in relation to the airport area consisting of the whole of the airport.
 - (3) Part 1 of this Act has effect on and after the commencement day as if the CAA—
 - (a) had made a determination to that effect on the commencement day, and
 - (b) had published a notice of the determination on that day in accordance with section 8.
 - (4) In section 7(5) (disapplication of CAA’s duty to make market power determination), the reference to a market power determination previously made by the CAA does not include a determination treated as made by virtue of sub-paragraph (3).
 - (5) Section 8(3) (CAA’s reasons for determination) does not apply in relation to the notice treated as published under sub-paragraph (3).
 - (6) A person may not appeal under Schedule 1 against the market power determination treated as made under sub-paragraph (3).

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Exemption from prohibition for designated airports during interim period

- 3 (1) This paragraph applies where, immediately before the commencement day, an airport is a designated airport.
- (2) Nothing in Chapters 1 and 3 of this Part prevents a person from requiring payment of, or recovering, charges in respect of services provided at the airport during the shorter of the following periods—
- (a) the interim period;
 - (b) the period beginning with the commencement day and ending with the day on which the airport ceases to be a designated airport.

Designation and de-designation before commencement day

- 4 (1) In section 7(5) (disapplication of CAA’s duty to make market power determination), the reference to a market power determination previously made by the CAA in relation to an airport area (or an area that includes all of a particular airport area) includes any of the following that are made on or after 10 November 2011—
- (a) an order designating the airport at which the area is located for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order;
 - (b) an order revoking the designation of that airport for those purposes;
 - (c) a decision by the Secretary of State or the Department of the Environment in Northern Ireland not to make an order mentioned in paragraph (a) or (b).
- (2) Where—
- (a) a request is made before the commencement day for an order designating an airport for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order or revoking the designation of an airport for those purposes, and
 - (b) the Secretary of State or the Department of the Environment in Northern Ireland does not make the order, or decide not to make the order, before the commencement day,
- the request is to be treated on and after that day as a request to the CAA for a market power determination in respect of the airport area consisting of the whole of the airport.
- (3) In this paragraph, references to an airport are to an airport as defined in the 1986 Act or the 1994 Order, except in the expression “airport area”.

Designation and de-designation during interim period

- 5 (1) During the interim period, an order may not be made designating an airport for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order.
- (2) Section 40A(1) of the 1986 Act and Article 31A(1) of the 1994 Order (duty to designate airports in specified circumstances) do not require an order designating an airport for those purposes to be made during the interim period.
- (3) During the interim period, an order designating an airport for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order—
- (a) must be revoked if the CAA makes, and publishes a notice of, a determination that the market power test is not met in relation to the designated airport (subject to sub-paragraph (4)), and
 - (b) may not otherwise be revoked.

- (4) During the interim period, such an order must not be revoked—
- (a) during the period in which a person may appeal to the Competition Appeal Tribunal against the determination,
 - (b) at a time when the effect of the determination is suspended or the Secretary of State or the Department of the Environment in Northern Ireland considers that it may be suspended, or
 - (c) if all or part of the determination has been set aside or quashed.
- (5) Where—
- (a) a request is made during the interim period for an order revoking the designation of an airport for the purposes of section 40 of the 1986 Act or Article 31 of the 1994 Order, and
 - (b) the Secretary of State or the Department of the Environment in Northern Ireland does not make the order, or decide not to make the order, before the end of that period,
- the request is to be treated after the end of the interim period as a request to the CAA for a market power determination in respect of the airport area consisting of the whole of the airport.
- (6) In this paragraph, references to an airport are to an airport as defined in the 1986 Act or the 1994 Order, except in the expressions “airport area” and “dominant airport”.

Modification of preceding paragraphs

- 6 (1) This paragraph applies where an airport as defined in section 66 of this Act (a “2012 Act airport”) consists of an airport as defined in the 1986 Act or the 1994 Order (a “predecessor airport”) and other land, buildings and structures.
- (2) In this paragraph “the main operator’s airport area” means the whole of the area at the 2012 Act airport in respect of which the operator (as defined in this Act) on the commencement day is the person who was the operator (as defined in the 1986 Act or the 1994 Order) of the predecessor airport immediately before the commencement day.
- (3) In paragraph 2—
- (a) the reference in sub-paragraph (1) to an airport is to the predecessor airport, and
 - (b) the reference in sub-paragraph (2) to the airport area consisting of the whole of the airport is to the main operator’s airport area.
- (4) In paragraph 3—
- (a) the reference in sub-paragraph (1) to an airport is to the predecessor airport,
 - (b) the reference in sub-paragraph (2) to services provided at the airport is to services provided in the main operator’s airport area, and
 - (c) the reference in sub-paragraph (2)(b) to the airport is to the predecessor airport.
- (5) An airport area that is not located at the predecessor airport is to be treated as located at that airport for the purposes of paragraph 4(1) if it forms part of the main operator’s airport area.
- (6) Where a request falling within paragraph 4(2)(a) and (b) is made in relation to the predecessor airport, the request is to be treated on and after the commencement day as

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a request for a market power determination in respect of the main operator’s airport area.

- (7) In paragraph 5(3), the reference to a determination that the market power test is not met in relation to the designated airport includes a determination that it is not met in relation to an airport area that includes the whole of the predecessor airport.
- (8) Where a request falling within paragraph 5(5)(a) and (b) is made in relation to the predecessor airport, the request is to be treated after the end of the interim period as a request for a market power determination in respect of the main operator’s airport area.

Power to amend this Schedule

- 7 The power under section 108 may not be used—
- (a) to provide that the interim period ends before 31 March 2014, or
 - (b) to make provision having an effect equivalent to any effect that would result from such a change.

PART 2

STATUS OF AIRPORT OPERATORS AS STATUTORY UNDERTAKERS ETC

Great Britain

- 8 In paragraphs 9 to 12 “the commencement day” means the day on which Part 1 of Schedule 8 comes into force.
- 9 (1) This paragraph applies where, in relation to an airport, a permission to levy airport charges is in force under Part 4 of the Airports Act 1986 (economic regulation of airports) immediately before the commencement day (but see paragraph 11).
- (2) The permission has effect on and after the commencement day as if it were a certificate granted by the CAA under section 57A of that Act (statutory undertakers) (inserted by Part 1 of Schedule 8).
- 10 (1) This paragraph applies where, immediately before the commencement day, there subsists a pending application made by the operator of an airport in accordance with section 38 of the Airports Act 1986 for a permission to levy airport charges (but see paragraph 11).
- (2) The application has effect on and after the commencement day as if it were an application for a certificate under section 57A of that Act (statutory undertakers) (inserted by Part 1 of Schedule 8).
- (3) Part 5 of the Airports Act 1986 (statutory undertakers) applies to the airport while the application is pending.
- 11 Paragraphs 9 and 10 do not apply where the airport is an airport mentioned in section 57A(5) of the Airports Act 1986 (airports owned by councils or transport authorities etc) (inserted by Part 1 of Schedule 8).
- 12 Nothing in this Act affects any rights or liabilities accruing under or by virtue of Part 5 of the Airports Act 1986 (statutory undertakers) before the commencement day.
- 13 In paragraphs 9 to 11, “airport” has the same meaning as in the Airports Act 1986.

Northern Ireland

- 14 In paragraphs 15 to 17 “the commencement day” means the day on which Part 2 of Schedule 8 comes into force.
- 15 (1) This paragraph applies where, in relation to an airport, a permission to levy airport charges is in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) (economic regulation of airports) immediately before the commencement day.
- (2) The permission has effect on and after the commencement day as if it were a certificate granted by the CAA under Article 2A of that Order (statutory undertakers) (inserted by Part 2 of Schedule 8).
- 16 (1) This paragraph applies where, immediately before the commencement day, there subsists a pending application made by the operator of an airport in accordance with Article 29 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) for a permission to levy airport charges.
- (2) The application has effect on and after the commencement day as if it were an application for a certificate under Article 2A of that Order (regulated airports) (inserted by Part 2 of Schedule 8).
- (3) The airport is to be treated as a regulated airport for the purposes of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) while the application is pending.
- 17 Nothing in this Act affects any rights or liabilities accruing under or by virtue of Part 2 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) (powers in relation to land exercisable in connection with airports) or Article 25 or 26 of that Order before the commencement day.
- 18 In paragraphs 15 to 17, “airport” has the same meaning as in the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)).