

SCHEDULES

SCHEDULE 10

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

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- (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).

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.