

31<sup>st</sup> May 2013

Dear sir/madam,

**Further information on the CAA's initial proposals for the economic regulation of Gatwick Airport Limited after April 2014.**

**1. Introduction**

1.1 On 30 April 2013, the CAA published its initial proposals for the regulatory arrangements that will apply for Gatwick Airport Limited (GAL) from April 2014, commonly known as the sixth quinquennium (Q6).<sup>1</sup> The CAA stated that it would provide further information in the lead up to the publication of the final proposals in October 2013. This letter provides further details in a number of areas to help inform consultees' responses to the initial proposals, in particular:

- draft price control licence conditions (Annex A);
- draft service quality licence conditions (Annex B);
- a description of how the CAA will determine the airport area covered by the licence;
- clarification of the CAA's views on an insolvency provision; and
- a draft penalties policy (Annex C).

1.2 These licence conditions are consistent with the CAA's initial proposal, which use a RAB-based framework. It should be emphasised that if the issues set out in the initial proposals relating to the enforcement and terms in GAL's proposed commitments are addressed then the CAA hopes that a commitments and limited licensing framework could be the preferred form of regulation for GAL.

---

<sup>1</sup> CAA, April 2013, Economic regulation at Gatwick from April 2014: initial proposals, <http://www.caa.co.uk/docs/33/CAP%201029%20Economic%20regulation%20at%20Gatwick%20from%20April%202014%20initial%20proposals.pdf>

- 1.3 The letter also sets an updated timetable of next steps from that announced in the initial proposals and some clarifications where stakeholders have raised concerns.
- 1.4 Alongside this letter the CAA is also publishing two further documents:
- CAA passenger research: satisfaction with the airport experience, Heathrow, Gatwick and Stansted; and
  - CAA: airport operating expenditure benchmarking report
- 1.5 The initial proposals highlighted a number of policy areas where the CAA was considering whether to include additional licence conditions. The aim of this letter is to provide further information rather than to further develop new policies. Consequently the CAA intends to wait for responses to the initial proposals before developing these policies further and drafting associated licence conditions.
- 1.6 Please note the deadline for response to the initial proposals, including the conditions set out in Annexes A & B, is **25 June 2013**. The CAA cannot commit to taking into account representations after this date. Responses should be emailed to [airportregulation@caa.co.uk](mailto:airportregulation@caa.co.uk).
- 1.7 The deadline for responding to the penalties statement in Annex C is **26 July 2013**. Responses should be emailed to [airportregulation@caa.co.uk](mailto:airportregulation@caa.co.uk).

## **2 Details of the draft price control condition**

- 2.1 Annex A sets out the draft price control licence conditions reflecting the CAA's views in the initial proposals. Many of the provisions are based on the Q5 price control conditions, with changes only to parameter values or to clarify terminology. Consistent with the initial proposals Annex A includes increasing the security cost 'dead band' from £7.0 million to £8.5 million to reflect inflation over Q5.
- 2.2 Annex A sets out drafting for new policy areas included in the initial proposals. This includes a 'development capex adjustment' condition to deal with the transition of capital expenditure (capex) projects from 'development' to 'core' status throughout the Q6 period. The intention of this condition is that the price cap is adjusted to reflect forecast under or over spending relative to the development capex allowance (see paragraphs 15.28 to 15.30 of the initial proposals). The governance arrangements through which core and development capex projects are managed have not yet been defined. Assuming such arrangements are defined effectively, the CAA would welcome stakeholder views on whether this condition would achieve the intended outcome or whether adjustments are required.

- 2.3 There have been some other changes from the Q5 conditions. The formulas for the calculation of the service quality bonus factor are now defined in the service quality conditions. Capex triggers associated with core projects have not yet been defined, but the CAA expects this condition to work in the same way as in Q5, with the addition of triggers associated with new core capex projects as such projects transition from development to core status. As with the 'development capex adjustment' the governance arrangements through which new core capex triggers are set have not yet been defined.
- 2.4 As part of the final proposals the CAA will consider whether the form of the security cost pass through condition provides symmetrical treatment of the costs associated with unforeseen changes in security requirements (whether positive or negative) or whether some adjustment is required.

### **3 Details of the draft service quality condition**

- 3.1 Annex B sets out the draft service quality conditions, reflecting the CAA's initial proposals. The draft licence condition consists of two parts: the condition itself and a schedule containing the statement of standards, bonuses and rebates. The condition and schedule have been drafted to reflect the policy in the initial proposals, and where appropriate provide further clarity, particularly around the detail of the measurements proposed. The schedule builds on the statement and standards and rebates set out in Annex H of the CAA's Q5 decision.<sup>2</sup>
- 3.2 In formulating the service quality conditions, an error was identified in chapter 13 (service quality), paragraph 13.104 of the initial proposals related to the calculation of the daily rebate for security queues. The example given in the text double counts the number of days generating a rebate, and the proposed rebate of 0.5% of daily airport charges (per day of failure) was intended be at the level of 2.5%. The conditions have been drafted in line with the text and the CAA seeks stakeholders' views on the appropriate level for this rebate.
- 3.3 The existing service quality regime set out in Annex H can be amended by agreement between the relevant airport, the AOC and the CAA or by the CAA itself. The Civil Aviation Act 2012 (the Act) allows the CAA to include provisions for making specified types of modifications to a condition in specified circumstances and at specified times without having to follow the more formal process for modification set out in section 22 of the Act. The service quality condition includes such a self-modification condition that allows immediate changes to be made to certain parts of the tables where the airport operator, the airlines and the CAA agree to the change. The CAA is interested in views on whether to limit the times that such

---

<sup>2</sup> CAA, March 2008, Economic Regulation of Heathrow and Gatwick Airports, 2008-2013, CAA decision, [http://www.caa.co.uk/docs/5/ergdocs/heathrowgatwickdecision\\_mar08.pdf](http://www.caa.co.uk/docs/5/ergdocs/heathrowgatwickdecision_mar08.pdf)

modifications can be made, for example one bundle of changes every 6 months. This would prevent a drip-feed of changes but would not be too restrictive for the effective application of the condition.

- 3.4 The CAA is also considering whether to include in the self-modification mechanism a provision whereby the CAA can make a determination if the airport operator and the airlines cannot reach agreement, for example where an insufficient number of airlines engage in the discussions to reach a quorate decision. The CAA would consider the outcome of any consultations carried out up to the time an application was made in making its decision. There would be no right of appeal to the CC but any decision would be open to Judicial Review. The advantage of this provision is that it would speed up changes in cases where there is poor engagement by some and would incentivise better engagement.
- 3.5 The draft condition allows a wide scope for making modifications to the Schedule under the self-modification provision, allowing changes to any aspect except the elements listed in the tables and the bonus scheme; these could still be modified under s22 of the Act. The CAA welcomes views on whether it is necessary to include such a wide range of possible modifications.
- 3.6 In developing the schedule to the service quality condition the CAA is considering how best it can discharge its duty to further the interests of passengers and cargo owners where the tables allow the airport and Terminal AOC to agree locally, for example in relation to the relevant time over which performance counts for rebates, changes to the security queue calculation methodology and standard of pier service by terminal. The CAA welcomes your views on whether it is necessary to include a provision within the licence condition or the schedule that allows the CAA to intervene if it considers the agreement is not in the interests of passengers and cargo owners.

#### **4 Determining the airport area**

- 4.1 The CAA's 'minded to' views for the market power assessment, consider services provided by GAL in the core area of the airport, as defined in section 5(4), namely:
  - the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport,
  - the passenger terminals,
  - the cargo processing areas.
- 4.2 The CAA considers that the airport area defined in the licence needs to be wider than this. Section 3 states:

- 3(1) Subsection (2) applies where for a period
- (a) a person (“P”) is the operator of an airport (“area A”) that is a dominant area or part of a dominant area,
  - (b) area A is located at a dominant airport
  - (c) P does not have a licence in relation to area A.
- 3(2) The persons mentioned in subsection (3)<sup>3</sup> may not require a person to pay a relevant charge in respect of airport operation services that are provided during that period in
- (a) Area A, or
  - (b) any other area that forms part of the same airport and in respect of which P is the operator and does not have a licence.

4.3 The CAA considers that area A is the area set out in the market power assessment (i.e. the core area of the airport) and that the licence therefore needs to cover other parts of the airport included in section 3(2)(b).

4.4 The CAA’s starting point for identifying these areas is the definition of airport in section 66 of the Act, the qualifying information in s 67 and the definition of airport operation services in section 68. The CAA will consider whether GAL provides airport operation services at the facilities listed in section 66. The CAA will also consider whether it has overall responsibility for the management of the facilities listed based on the matters set out in section 9(4) of the Act. These are that it has control to some extent over the types, prices charged and quality of services provided in the area, access to the area and the development of the area.

## **5 Insolvency.**

5.1 The CAA has been considering what actions would be appropriate in a situation where a Licensee was to become insolvent. It has considered various proposals such as that adopted in other sectors where a licence can be revoked due to insolvency.

5.2 The CAA has developed its views on this further since the April consultation and now considers that an obligation, similar to that found in the Air Travel Operator Licences (ATOL,) to notify it within three days in the event that the Licensee seeks advice on insolvency would give sufficient early warning to the CAA of any insolvency risk. This approach reflects the views set out in the CAA’s discussion on financial resilience in the April consultation, because in the event of insolvency it would most

---

<sup>3</sup> P, a person who is connected to P, a person to whom P or a person connected to P has assigned the right to require payment of the charge or any other person acting on behalf of these people.

likely be in the interests of any receiver and passengers and cargo owners to keep the airport open and running. The CAA therefore proposes that the requirements in relation to insolvency can be limited to an additional obligation in Condition 8 of the Licence setting out the notification requirements. The CAA welcomes views on the best approach.

## 6 **Updated timescales for the Q6 and market power determination process**

6.1 The CAA has updated its timescales on the market power determinations and the notices regarding the granting of any licences required, including the Q6 price control conditions, as follows:

- Consultation on the Q6 final proposals and other licence conditions will still take place on or shortly before **4 October 2013**, with at least 4 weeks to respond.
- The market power determinations and any necessary notices proposing to grant licences will be published on or shortly before **9 January 2014**, with three weeks to respond.
- Any notices granting a licence will be published in the week commencing **10 February 2014**.

6.2 The CAA would like to thank GAL, the airlines operating at Gatwick and other stakeholders for their continued positive contribution to the Q6 regulatory review.

Yours faithfully,



Tim Griffiths  
**Economic Regulation**

## Annex A Draft price control condition

---

### CONDITION 3: Price Control

- 3.1 The licence condition set out in Annex A reflects the CAA's policies identified in the Initial Proposals. Many of the provisions are based on the Q5 price control conditions, with changes only to parameter values. This includes increasing the security 'dead band' from £7.0m to £8.5m to reflect inflation over Q5.

$$M_{2014/15} = A \left( 1 + \frac{B_{2014/15}}{100} \right) + \frac{D_{2014/15}}{Q_{2014/15}} - \frac{T_{2014/15}}{Q_{2014/15}} - K_{2014/15}$$

Where:

$M_{2014/15}$  is the maximum average revenue yield per passenger using Gatwick airport in 2014/15 expressed in £;

A is the opening average revenue yield per passenger defined by the CAA<sup>4</sup>;

$B_{2014/15}$  is a bonus factor in 2014/15 defined in condition 3.8;

$T_{2014/15}$  is a capital 'trigger' factor in 2014/15 defined in condition 3.7;

$Q_{2014/15}$  is the forecast number of passengers using the airport in 2014/15;

$K_{2014/15}$  is the per passenger correction factor in 2014/15 defined in condition 3.5; and

$D_{2014/15}$  is the development capex adjustment factor defined in condition 3.9.

- 3.2 On each occasion on which the Licensee fixes the amounts to be levied by it by way of airport charges in respect of relevant air services in each of the four subsequent relevant years beginning with 1st April 2015, the Licensee shall fix those service charges at the levels best calculated to secure that, in each relevant year, total revenue at Gatwick airport from such charges divided by the total number of passengers using Gatwick airport does not exceed the amount set in accordance with the formula below:

$$M_t = \left( 1 + \frac{RPI_{t-1} + X + B_t}{100} \right) Y_{t-1} + \frac{D_t}{Q_t} - \frac{T_t}{Q_t} - K_t$$

---

<sup>4</sup> This will be equal to the nominal value of £8.305 in 2011/12 prices expressed in 2013/14 prices.

## Annex A: Draft price control condition

*Where:*

$M_t$  is the maximum average revenue yield per passenger using Gatwick airport in relevant year  $t$  expressed in £, where;

$RPI_{t-1}$  is the percentage change (positive or negative) in the Retail Price Index between that published with respect to August in relevant year  $t-1$  and that published with respect to the immediately preceding August.

$X$  is the 'price growth factor';

$B_t$  is a bonus factor defined in condition 3.8;

$Y_{t-1}$  is the average revenue yield per passenger defined in condition 3.3;

$T_t$  is a 'trigger' factor defined in condition 3.7;

$Q_t$  is the forecast number of passengers using the airport in year  $t$ ;

$K_t$  is the per passenger correction factor defined in condition 3.5;  
and

$D_t$  is the development capex adjustment factor defined in condition 3.9.

3.3  $Y_{t-1}$  is the average revenue yield per passenger calculated in accordance with the following formulae:

$$Y_{t-1} = Y_{t-2} \left( 1 + \frac{RPI_{t-2} + X}{100} \right) + S_{t-1}$$

*Where:*

$$Y_{2014/15} = A + S_{2014/15}$$

$A$  is the opening average revenue yield per passenger defined by the CAA<sup>5</sup>;

$RPI_{t-2}$  is the percentage change (positive or negative) in the Retail Price Index between that published with respect to August in relevant year  $t-2$  and that published with respect to the immediately preceding August;

$X$  is the price growth factor; and

---

<sup>5</sup> This will be equal to the nominal value of £8.305 in 2011/12 prices expressed in 2013/14 prices.



## Annex A: Draft price control condition

$S_{t-1}$  is the allowable security cost per passenger defined in condition 3.4.

- 3.4  $S_{t-1}$  is the allowable security cost per passenger using Gatwick airport in relevant year t-1 arising as a result of changes to security standards (whether of a positive or negative value). This mechanism only applies when such costs are above or below a cumulative £8,500,000 "dead band" figure and is calculated in accordance with the following formulae expressed in £:

For each relevant year t-1, with reference to the absolute value of EC:

*If*

$EC_{t-1} \geq \text{£}8,500,000$ ; and  
 $EC_{t-2} \geq \text{£}8,500,000$

*Then:*

$$S_{t-1} = 0.9C_{t-1}$$

*Or if:*

$EC_{t-1} > \text{£}8,500,000$ ; and  
 $EC_{t-2} < \text{£}8,500,000$

*Then:*

$$S_{t-1} = 0.9 \frac{(EC_{t-1} - \text{£}8,500,000)}{(6 - t)q_{t-1}}$$

*Or if:*

$EC_{t-1} < \text{£}8,500,000$ ; and  
 $EC_{t-2} > \text{£}8,500,000$

*Then:*

$$S_{t-1} = -0.9 \frac{(EC_{t-2} - \text{£}8,500,000)}{(6 - t)q_{t-1}}$$

*Where:*

$t_{2014/15} = 1$   $t_{2015/16} = 2$   $t_{2016/17} = 3$   $t_{2017/18} = 4$

$C_t$  is the total qualifying security claims per passenger using Gatwick airport in relevant year t-1 (whether of a positive or negative value) expressed in £ relative to the previous year;

$EC_t$  is the expected cumulative security cost associated with changing security standards over Q6, in year t;

*Otherwise:*

$$S_{t-1} = 0$$

The expected cumulative security cost ( $EC_t$ ) shall be calculated as shown in the table below:

**Table 1 Calculation of Annualised Security Costs**

Year (t-1)	2013/14	2014/15	2015/16	2016/17	2017/18
A. Effect of claims relating to 2014/15		5 x C <sub>2014/15</sub> x Q <sub>2014/15</sub>	5 x C <sub>2014/15</sub> x Q <sub>2014/15</sub>	5 x C <sub>2014/15</sub> x Q <sub>2014/15</sub>	5 x C <sub>2014/15</sub> x Q <sub>2014/15</sub>
B. Effect of claims relating to 2015/16			4 x C <sub>2015/16</sub> x Q <sub>2015/16</sub>	4 x C <sub>2015/16</sub> x Q <sub>2015/16</sub>	4 x C <sub>2015/16</sub> x Q <sub>2015/16</sub>
C. Effect of claims relating to 2016/17				3 x C <sub>2016/17</sub> x Q <sub>2016/17</sub>	3 x C <sub>2016/17</sub> x Q <sub>2016/17</sub>
D. Effect of claims relating to 2017/18					2 x C <sub>2017/18</sub> x Q <sub>2017/18</sub>
Expected Cumulative Cost	0	Sum Rows A-D	Sum Rows A-D	Sum Rows A-D	Sum Rows A-D

Where:

C<sub>t</sub> is the total qualifying security claims per passenger using Gatwick airport in relevant year t (whether of a positive or negative value) expressed in £; and

q<sub>t</sub> is the actual number of passengers using Gatwick in the relevant year.

- 3.5 K<sub>t</sub> is the correction per passenger (whether positive or negative value) to be made in year t, which is calculated as follows:

$$K_t = \frac{T_{t-2} - (q_{t-2}M_{t-2})}{Q_t} * \left(1 + \frac{I_{t-2}}{100}\right)^2$$

In which:

T<sub>t</sub> = total revenue from airport charges in respect of relevant air services levied at Gatwick airport in year t;

q<sub>t-2</sub> = actual passengers using Gatwick airport in year t-2

Q<sub>t</sub> = forecast passengers using Gatwick airport in year t;

M<sub>t</sub> = maximum average revenue yield per passenger using Gatwick airport in year t;

## Annex A: Draft price control condition

$I_t$  = the appropriate interest rate for year  $t$  which is equal to; where  $K_t$  (taking no account of  $I$  for this purpose) has a positive value, the specified rate plus three percentage points; or where  $K_t$  (taking no account of  $I$  for this purpose) has a negative value, the specified rate.

- 3.6 In relation to the relevant years 2014/15 and 2015/16, the values of  $T_{t-2}$ ,  $q_{t-2}$ ,  $M_{t-2}$  and  $I_{t-2}$  shall be calculated by reference to the conditions as to airport charges imposed in relation to Gatwick airport in force at 31st March 2014.
- 3.7  $T_t$  is the trigger factor, which is a reduction in the maximum allowable average revenue yield per passenger occurring when the airport has not achieved specific capital investment milestones. The factor is calculated as follows:

$$T_t = \sum_{\text{Triggers}} \sum_{\text{April}}^{\text{March}} TM_{ti} TF_{tij}$$

*Where:*

$T_t$  is the total trigger payment in year  $t$ ;

$TF_{tij}$  is the trigger factor associated with each trigger;

The specified project triggers and monthly trigger payments are yet to be defined.

For any specific trigger  $i$ , in month  $j$ , in year  $t$ :

*If either:*

the relevant month is before or corresponds to the month specified as the "milestone month"; or

the relevant month is after the month in which the "completion date" of the relevant project takes place:

*Then:*

$$TF_{tij} = 0$$

*Otherwise:*

$$TF_{tij} = 1$$

$TM_{ti}$  is the monthly trigger payment associated with each trigger;

## Annex A: Draft price control condition

Where:

$$TM_{ti} = MTP_i * \frac{PI_t}{PI_{2013/14}}$$

Where:

$MTP_i$  = Monthly Trigger Payment is defined for each relevant project;  
and

$PI_t$  = Is the Price Index defined as the average monthly value of the CHAW series of the retail price index for the 12 months from April to March in the financial year t.

"Milestone Month" is defined independently for each project; and

"Completion date" is the date when in the judgement of the CAA the airport has achieved the trigger criteria to be published from time to time by the CAA.

- 3.8  $B_t$  is a bonus factor based on performance in respect of specified elements (i) of the airports Service Quality Rebate in year t. The bonus calculation is defined in the Schedule 1 Statement of Standards, Bonuses and Rebates.
- 3.9  $D_t$  is the development capex adjustment factor, which adjusts the maximum allowable average revenue yield per passenger in each year to account for cumulative changes in the revenue requirement associated with changes to forecast capex occurring throughout Q6. The adjustment factor in each year is to be calculated based on Table 2

**Table 2 Development Capex Adjustment Factor**

Year t:	2014/15	2015/16	2016/17	2017/18	2018/19
Additional revenue requirement in 2014/15	$0.5*d_{2014/15}$	$d_{2014/15}$ $*P_t/P_{2014/15}$	$d_{2014/15}$ $*P_t/P_{2014/15}$	$d_{2014/15}$ $*P_t/P_{2014/15}$	$d_{2014/15}$ $*P_t/P_{2014/15}$
Additional revenue requirement in 2015/16	0	$0.5*d_{2015/16}$	$d_{2015/16}$ $*P_t/P_{2015/16}$	$d_{2015/16}$ $*P_t/P_{2015/16}$	$d_{2015/16}$ $*P_t/P_{2015/16}$
Additional revenue requirement in 2016/17	0	0	$0.5*d_{2016/17}$	$d_{2016/17}$ $*P_t/P_{2016/17}$	$d_{2016/17}$ $*P_t/P_{2016/17}$
Additional revenue requirement in 2017/18	0	0	0	$0.5*d_{2017/18}$	$d_{2017/18}$ $*P_t/P_{2017/18}$
Additional revenue requirement in 2018/19	0	0	0	0	$0.5*d_{2018/19}$
$D_t =$ Cumulative change in revenue requirement	Sum Total $*W$	Sum Total $*W$	Sum Total $*W$	Sum Total $*W$	Sum Total $*W$

Where:

$W$  is the Weighted Average Cost of Capital as defined by the CAA;

$d_t$  is the development capex adjustment in year  $t$ ; and

$P_t$  is the average monthly value of the CHAW series Retail Price Index as calculated between August in relevant financial year  $t$  and September in financial year  $t-1$ .

- 3.10 The development capex adjustment in year  $t$  is an amount equal to the net difference between the development capex allowance included in the Q6 RAB settlement and the total capex forecast associated with new 'core' projects in year  $t$  across all capital portfolios, to be calculated as follows:

$$d_t = o_t - \left( v_t * \frac{P_t}{P_{2013/14}} \right)$$

## Annex A: Draft price control condition

Where:

$o_t$  is the total capex forecast in year  $t$  associated with all projects transitioning to core status after the Q6 settlement either during or before year  $t$  in outturn prices, **as agreed through governance arrangements to be defined**.

$v_t$  is the development capex allowance in year  $t$  in 2013/14 prices **as agreed through governance arrangements to be defined**.

$P_t$  is the average monthly value of the CHAW series Retail Price Index as calculated between August in relevant financial year  $t$  and September in financial year  $t-1$ .

- 3.11 In each of the five relevant years beginning on the 1st April 2014, the Licensee shall not levy airport charges in respect of air services that do not fall within the definition of relevant air services for the purposes of Condition 1 that are higher than are levied in respect of equivalent air services falling within that definition.
- 3.12 In this condition 3:
- a) **airport charges** has the meaning assigned to it by regulation 3(1) of the Airport (Charges) Regulation 2011 (2011 No.2491);
  - b) **average revenue yield per passenger** means the revenue from airport charges levied in respect of relevant air services in the relevant year before any deduction of unpublished discounts or payments under Service Level Agreements divided by the total number of passengers using Gatwick airport in the relevant year;
  - c) **completion date** is the date when, in the judgement of the CAA, the airport has achieved the criteria to be published from time to time by the CAA;
  - d) **core capex project** is defined as any project that has reached Tollgate 3, being taken forward for implementation following consultation and **agreed through governance arrangements to be defined**;
  - e) **development capex allowance** is an capex allowance included in the Q6 RAB based on the sum of development capex project P80 cost estimates;
  - f) **development capex project** is defined as any project under development that has not reached Tollgate 3 or been **agreed through governance arrangements to be defined**, but for which a development capex budget allowance has been made in the Q6 settlement.

Annex A: Draft price control condition

- g) passenger using an airport** means a passenger joining or leaving an aircraft at Gatwick airport;
- h) price growth factor** is the maximum amount by which the CAA has decided prices may change relative to RPI.
- i) qualifying security claim per passenger** means the annual equivalent of the increase or decrease in security costs at Gatwick airport in the relevant year t-1 which arise as a result of a change in required security standards at that airport, as certified by the CAA, divided by the number of passengers using the airport in that year;
- j) relevant air services** means air services carrying passengers that join or leave an aircraft at Gatwick airport, including air services operated for the purpose of business or general aviation;
- k) relevant year** means the period of twelve months ending with 31st March in each year;
- l)  $RPI_{t-1}$**  means the percentage change (whether of a positive or negative value) in the Retail Price Index between that published with respect to August in relevant year t-1 and that published with respect to the immediately preceding August, and " $RPI_{t-2}$ " shall be construed accordingly;
- m) specified rate** means the average of the Treasury Bill Discount Rate (expressed as an annual percentage interest rate) published weekly by the Bank of England, during the 12 months from the beginning of September in year t-2 to the end of August in year t-1.

## **Annex B Draft service quality rebates and bonuses condition.**

---

### **Condition 5: Service quality levels and rebates.**

- 5.1 The Licensee shall pay specified rebates to providers of air transport services whenever its quality of service fails to meet specified service standards, as set out in the Statement of Standards and Rebates.
- 5.2 The Statement of Standards and Rebates is contained in Schedule 1 to this Licence.
- 5.3 The Licensee shall maintain records of the actual quality of service and rebates in such form and detail that the performance should be independently audited against the standards set out in Schedule 1 to this Licence.
- 5.4 The Licensee shall publish relevant information about its performance in accordance with the requirements specified in Part 4 of the Statement of Standards and Rebates.
- 5.5 The Licensee shall facilitate regular, independent audits of the adequacy, measurement and workings of the service quality regime, including the QSM methodology. The independent auditors for this purpose will be appointed by the CAA and shall report to the CAA.
- 5.6 The CAA may by notice modify the Statement of Standards and Rebates with immediate effect where there is written agreement between:
  - a) the Licensee;
  - b) the relevant Terminal AOC representing providers of air transport services carrying more than [x]% of passengers; and
  - c) the CAA.
- 5.7 Where:
  - a) the Licensee requests the CAA to determine a modification but has not secured written agreement with the Terminal AOC representing providers of air transport services carrying more than [x]% of passengers; or
  - b) the Terminal AOC representing providers of air transport services carrying more than [x]% of passengers requests the CAA to



## Annex B: Draft service quality rebates and bonuses condition

determine a modification but has not secured written agreement with the Licensee,

the CAA may by notice determine the modifications, following a reasonable period of consultation.

- 5.8 The modifications that can be made under Conditions 5.6 and 5.7 are any modifications to Schedule 1 except:
- a) any modifications to the elements listed in the “Element” columns of Tables 3 and 4; and
  - b) any modifications to the bonuses set out in Table 6 and to the calculation of the bonus factor in Part 3.
- 5.9 Modifications can be made to the table(s) in the Statement of Standards and Rebates within [x period].

### **Definitions**

- 5.10 In this Condition 5:
- a) The QSM methodology has the meaning set out in the Statement of Standards and Rebates.

## **Schedule 1 to Annex B: Draft statement of standards, bonuses and rebates.**

---

### **1. Introduction**

- 3.1 This Schedule sets out the Standards, Bonuses and Rebates as referred to in Condition 5 of this License.
- 3.2 The Licensee shall pay rebates to Relevant Parties as set out in this Schedule as modified from time to time. This Schedule may be modified in accordance with Condition 5.
- 3.3 The Licensee shall pay rebates for each terminal calculated as follows:
- $$\text{Annual percentage rebate} = \text{Rebate}_{\text{P\&A}} + \text{Rebate}_{\text{ACT}}$$
- where:
- $\text{Rebate}_{\text{P\&A}}$  is the aggregate percentage rebate in the Relevant Year relating to the Passenger and Airline elements (P&A) and calculated as defined in section 2.A of this schedule; and
- $\text{Rebate}_{\text{ACT}}$  is the aggregate percentage rebate in the Relevant Year relating to the Aerodrome Congestion Term (ACT) as defined in section 2.B of this schedule;
- 3.4 Except where explicitly stated,  $\text{Rebate}_{\text{P\&A}}$  shall be calculated separately for each terminal based on the performance relevant to each individual terminal against the standards set out for that terminal.
- 3.5  $\text{Rebate}_{\text{ACT}}$  shall be calculated across all the passenger air transport services at the airport and the same rebates as a percentage of the relevant charges shall be paid to the Relevant Parties using all the terminals at the airport.
- 3.6  $B_t$  is a bonus factor based on performance that feeds into the price control condition and it is calculated as set out in section 3 of this Schedule.

## 2. Payment of Rebates

3.7 This Schedule sets out the total level of rebates that shall accrue over the year. The Licensee shall, however, pay rebates to the Relevant Parties on a monthly basis in the month following the month in which they accrue. The rebates applying to each individual terminal shall be allocated to the relevant parties that used the terminal in the relevant month *pro-rata* with the airport charges incurred for passenger services in that month.

3.8 The payments on a month-by month basis will have to be based on a forecast of the total airport charges from passenger services in the Relevant Year. The Licensee shall base the scale of monthly rebate payments on its best estimate of the total airport charges from passenger services for the Relevant Year. This is likely to lead to the sum of the monthly rebates paid during the course of the Relevant Year being less or more than the rebates required by this statement for the Relevant Year as a whole. Therefore,

- a) Where the amount of rebates paid during the course of the Relevant Year is less than the amount of annual rebates required by this Schedule, the Licensee shall be liable to pay further amounts to the Relevant Parties that have received rebates so that the amount of rebates paid in respect of the Relevant Year is brought up to the level required by this Statement. Such additional amounts shall be paid to the relevant parties *pro rata* to the rebates already paid in the course of the year and should be made as soon as practicable after the publication of the Licensee's audited accounts. Payment will be waived where the CAA receives a letter from the AOC to the effect that the sum is so small that to enforce payment would incur disproportionate processing costs for the relevant airlines.
- b) Where the amount of rebates paid during the course of the Relevant Year is more than the amount of annual rebates required by this schedule, the Licensee may recover the difference between the amount paid and the required amount from the parties that have received rebates *pro rata* with the rebates paid.

## Annex B: Draft service quality rebates and bonuses condition

### 2.A Calculation of Rebate<sub>P&A</sub> Element

3.9 Rebate<sub>P&A</sub> shall be calculated separately for each terminal applying the relevant performance parameters for that terminal.

3.10 For each terminal, the Rebate<sub>P&A</sub> shall be calculated as follows

$$\text{Rebate}_{P\&A} = \sum_{\text{elements}} \text{MIN} \left[ \text{ANNMAX}_i, \sum_{\text{months}} p_i \cdot x_{ij} \right]$$

where:

$p_i$  is the relevant potential rebate percentage per month for each element  $i$  as determined in paragraph 3.13

$\text{ANNMAX}_i$  is the maximum annual rebate percentage for each element as determined in paragraph 3.13;

If element is Central search - second element ( $i = 7$ ) then

$x_{ij}$  = Proportion of days in month  $j$  in which there was at least a single queue time measurement exceeding the Standard;

If element is not Central search - second element ( $i \neq 7$ ) then

$x_{ij} = 0$  if  $\text{Standard}_i$  in month  $j$  is met as defined in paragraph 3.11; or

$x_{ij} = 1$  otherwise

3.11 The  $\text{Standard}_i$  in month  $j$  is met if:

b) for elements other than pier service, departure lounge seat availability, cleanliness, way-finding and flight information:

$$s_{i,j} \geq \text{Standard}_i$$

c) for pier service, departure lounge seat availability, cleanliness, way-finding and flight information element  $i$  will meet the  $\text{Standard}_i$  in month  $j$  if:

$$\frac{\sum_{m=1}^{m=12} [\pi_{j-m+1} s_{i,j-m+1}]}{\sum_{m=1}^{m=12} \pi_{j-m+1}} \geq \text{Standard}_i$$

where:

## Annex B: Draft service quality rebates and bonuses condition

$s_{i,j}$  is the performance of element  $i$  in month  $j$  on the same measurement basis as defined for the relevant Standard $_i$ ;

$\pi_j$  is the number of terminal passengers in the relevant terminal in month  $j$ ;

Standard $_i$  is the relevant Standard in each terminal as defined in Table 3 and Table 4;

$m$  is a counter of the 12 months ending in month  $j$ ;

### **Exclusions**

3.12 The following sets out the limited circumstances when time will not be required to be counted towards the time when equipment is unavailable or when other standards are not met:

- a) specific stands, jetties and fixed electrical ground power to accommodate annual and five yearly statutory inspections, where this work is done in consultation with the airport AOC, and the period specified in advance, the exclusion not to be more than two days over any year (measured from 1 April –31 March) for any particular relevant asset. If works extend beyond any notified period, then any additional downtime would count against the serviceability standard;
- b) specific passenger sensitive equipment or arrivals reclaim baggage carousels to accommodate planned maintenance, where the work is done in consultation with the airport AOC, the period is specified in advance, the work falls in a dead-band month as defined in paragraph 3.42, and the exclusion is not more than 30 days over any year (measured from 1 April –31 March) for any particular relevant asset. If works extend beyond a notified period, then any additional downtime would count against the serviceability standard. (If a specific asset is measured against both the General Passenger Sensitive Equipment standard and the Priority Passenger Service Equipment standard this exclusion applies to both);
- c) security queues<sup>6</sup> for two hours following evacuations;

---

<sup>6</sup> For the avoidance of doubt, this exemption applies to transfer search, staff search and control post search as well as to central search.

## Annex B: Draft service quality rebates and bonuses condition

- d) in respect of the Tower Gate control post at Gatwick Airport, when closed at the request of the UK Border Agency to process detainees and, in such circumstances, for 30 minutes after it is subsequently re-opened;
- e) closure of passenger-sensitive equipment (lifts, escalators, moving walkways) in areas immediately adjacent to security queues where it is considered by the Licensee that their continued use is likely to lead to unacceptable health and safety risks due to increased congestion;
- f) stands taken out of service to accommodate high security flights;
- g) closure of stands to ensure passenger safety during evacuation, emergency or safety incidents and relevant passenger sensitive equipment subject to the AOC agreeing after the event that such passenger service equipment was in the immediate vicinity of the stands or the incident;
- h) downtime where equipment is automatically shut down by fire alarm activation and the fire alarm activation is not due to a system fault with the fire alarm;
- i) passenger sensitive equipment where downtime is due to the activation of an emergency stop bottom or break glass, limited to equipment where there is back indication of serviceability and limited to 10 minutes for each occurrence in the case of false alarms;
- j) downtime to accommodate fire risk assessed deep cleans where an assessment of the equipment's condition has shown that a deep clean is needed to ensure a safe operation can be maintained and to reduce the risk of fire;
- k) equipment downtime due to damage of, or misuse to, baggage carousels, jetties, stand equipment (e.g. lighting) or fixed electrical ground power units likely to have been caused by airlines or their agents or to passenger sensitive equipment where an airline or airline agent has accepted responsibility or where the AOC agrees with the airport in writing that the likelihood is that the damage has been caused by an airline or its agent;

## Annex B: Draft service quality rebates and bonuses condition

- l) downtime where a fault has been reported by airlines or their agents, but, when the engineers attend the site, no fault is found and the equipment is working;
- m) equipment or stands taken out of service whilst a major investment project is undertaken in the vicinity where this is done in consultation with users and the timing of work has been determined after consultation with the terminal's AOC, and the period specified in advance. If work extends beyond this period, then the additional downtime will count against the serviceability target;
- n) equipment or stands taken out of service for replacement or major refurbishment work, when the timing of work has been determined after consultation with the terminal's AOC, and the period specified in advance. If work extends beyond this period, then the additional downtime will count against the serviceability target;
- o) security process and equipment trials that are carried out for a predetermined period that has been agreed by the Licensee and the AOC are excluded for the period of the trial;
- p) major operational disruption events which have a major impact on security staff resource, passenger volumes or off schedule activity. The applicability and duration of the exclusion in respect to these events would be limited to what is agreed with the AOC where such agreement can be retrospective; and
- q) the security lanes operated under the banner assistance lanes are excluded from the service standards.

### **Calculation of the rebates**

3.13 The relevant elements of service for calculating  $\text{Rebate}_{\text{P\&A}}$  are identified in Table 3 and Table 4. Table 3 applies to Gatwick South Terminal and Table 4 applies to Gatwick's North Terminal. In these tables:

- a) Element identifies the relevant element  $i$  of service;
- b) Metric defines the basis of measurement for each relevant element  $i$
- c)  $\text{Standard}_i$  defines the Standard applying for relevant element  $i$ ;

## Annex B: Draft service quality rebates and bonuses condition

- d)  $ANNMAX_i$  is the maximum percentage of airport charges for the Relevant Year relating to passenger services for the relevant terminal;
- e)  $p_i$  is the relevant potential rebate percentage per month for each element  $i$  which (except for Central search - second element) is one sixth of the maximum percentage of airport charges for the Relevant Year relating to passenger services for the relevant terminal.
- f) Passenger sensitive equipment (priority) is a set of assets for each terminal agreed locally between the Licensee and the terminal AOC and notified in writing to the CAA from time to time.

### **QSM definition**

3.14

QSM is the Quality of Service Monitor survey which shall be conducted using the following approach:

- a) The QSM will be based on the results of survey interviews with not less than 18,000 passengers (departing and arriving interviews combined) per year at the airport.
- b) the interviews obtained shall reflect the expected profile of passengers travelling through the airport weighted such that they are representative, set by:
  - i) country of destination for departing interviews; and
  - ii) country of origin for arriving interviews.
- c) In instances where the country total traffic is high, the sample may have a sub-weighted by individual airport destinations.
- d) The QSM scores shall be calculated through a weighted average of the individual scores, weighted by actual traffic statistics for the month.
- e) Departing passengers shall be interviewed at the gate/gate area, immediately prior to boarding the aircraft.
- f) Arriving passengers shall be interviewed on the Arrivals Concourse just before leaving the terminal building.



## Annex B: Draft service quality rebates and bonuses condition

- g) Selection of passengers to take part in the survey shall be random and unbiased with respect to demographic characteristics.
- h) During the course of a month, interviewing shall be conducted in each terminal on a selection of mornings/afternoons and weekdays/weekend days.

3.15 In respect of the relevant elements for the standards and rebates scheme and for the charges controls the following interviewing procedures shall apply:

### Introduction

- a) The interviewer states “I am now going to ask you a series of questions which require you to rate your answers on the same rating scale”. The showcard is then displayed with the following responses on it: Extremely poor (1), Poor (2), Average (3), Good (4), Excellent (5)

### Departure lounge seat availability

- b) “Now, thinking about the departures lounge, how do you rate the ease of finding a seat?”

### Way-finding

- c) A weighted average of the QSM scores for the three way-finding questions, weighted by the number of passengers using each form of way-finding
  - i) “How easy for you was it to find your way around within this terminal?” (question asked of departing passengers)
  - ii) “Have you been between terminals today? How would you rate the ease of finding your way?” (question asked of departing passengers)
  - iii) “How easy was it to find your way around within this terminal?” (question asked of arriving passengers)

### Flight Information

- d) A simple average of the QSM scores for the three flight information questions which are asked of departing passengers

## Annex B: Draft service quality rebates and bonuses condition

- i) "Flight information (screens and boards only) - how do you rate the ease of finding?"
- ii) "Flight information (screens and boards only) - how do you rate the ease of reading?"
- iii) "Flight information (screens and boards only) - how do you rate the ease of understanding the information?"

### Cleanliness

- e) A weighted average of the QSM scores for five cleanliness questions, weighted by the number of passengers using each type of facility
  - i) "Generally, how would you rate the cleanliness of the Terminal overall?"
  - ii) "How would you rate the level of cleanliness of the check-in area?" (question asked of departing passengers)
  - iii) "How would you rate the cleanliness in the lounge?" (question asked of departing passengers)
  - iv) "How would you rate the cleanliness of the arrivals concourse?" (question asked of arriving passengers)
  - v) "How do you rate the toilet facilities level of cleanliness?" (question asked of departing and arriving passengers)

### Security

- f) A simple average of the QSM scores for the four security questions which are asked of departing passengers
  - i) "How would you rate the queuing time?" (question asked of departing passengers)
  - ii) "and the helpfulness/courtesy of the staff?" (question asked of departing passengers)
  - iii) "care taken with your belongings during the checks" (question asked of departing passengers)
  - iv) "Organisation/efficiency of the whole Security process" (question asked of departing passengers)

## Annex B: Draft service quality rebates and bonuses condition

### **Queue Time**

- 3.16 Queue Time for central security queues and transfer search shall be the delay imposed by the queue for security including ticket presentation and facial capture, up to the point that the passenger reaches the security roller bed.
- 3.17 Queue Time will be calculated by:
- $$A - B + C$$
- Where:
- A is the elapsed time between passengers or staff passing a defined entry portal and reaching the security roller bed (the exit point);
- B is an allowance for the free flow transit time from the point when passengers reach the entry portal to the point where they reach the security roller bed (including an allowance for any intermediate processes conducted between the portal and the roller-bed); and
- C is any additional time that passengers spend in the queue for search before reaching the defined entry portal.
- 3.18 The unimpeded walktimes, inclusion of any uni-queue or maze systems, process delay times, entry and exit points allowed for in the above equation shall be agreed locally for each search area between the Licensee and terminal AOC with final endorsement at the appropriate joint forum.
- 3.19 The Defined Method of data collection shall be agreed locally for each search area between the Licensee and terminal AOC with final endorsement at the appropriate joint forum..
- 3.20 The Defined Method is either:
- a) Manual method - where queues are measured by the Manual method, times will be taken by manually noting the queue time of the first passenger presenting to either the portal (if the queue does not extend to the portal) or the back of the queue (if the queue extends beyond the portal) after a clockwise 15 minute period (i.e. xx:00, xx:15, xx:30, xx:45) during the relevant time over which performance counts for rebates, up to the point that the passenger reaches the security roller bed; or

## Annex B: Draft service quality rebates and bonuses condition

- b) Automated method - where queues are measured by the automated method, times will be taken by an electronic system that has been reviewed by the CAA.

3.21 The proportion of measurements under a specified number of minutes is calculated by dividing the number of measurements under a specified number of minutes by the total number of measurements taken<sup>7</sup>.

3.22 The per passenger metric<sup>8</sup> shall be calculated as:

$$PPM = \sum_m \frac{Pax_m}{\sum_m Pax_m} \cdot C_m$$

Where:

$Pax_m$  is the estimated number of passengers using the search facility in period  $m$  based on the Licensee's measurements of passenger throughput.

$C_m$  is the proportion of measurements under a defined number of minutes in period  $m$  and it is calculated by dividing the number of measurements under a defined number of minutes by the total number of measurements taken in period  $m$ .

The periods  $m$  shall be agreed locally between the Licensee and terminal AOC with final endorsement at the appropriate joint forum<sup>9</sup>.

### **Availability**

3.23 Availability of relevant facilities is calculated for element  $i$  in month  $j$  as:

$$\text{Availability}_{ij} = 100 \cdot \left( 1 - \frac{\sum_{k=1}^{n_i} TU_{k,j}}{n_i \cdot T_j} \right)$$

Where:

$\text{Availability}_{ij}$  is the percentage availability of element  $i$  in month  $j$ ;

$n_i$  is the number of assets included in element  $i$ ;

---

7 For the avoidance of doubt this metric is to be used between April 2014 and March 2015.

8 To be introduced after April 2015 as footnoted in Table 3 and Table 4

9 This specification allows for setting the number of periods  $m$  to 1 (the whole month), or to make a passenger weighted average of the measurements by defining two or more periods in the month (such as peak/off-peak or hourly periods)

## Annex B: Draft service quality rebates and bonuses condition

$TU_{k,j}$  is the relevant time elapsed during which asset k is unavailable as set out below;

$T_j$  is the total relevant time in month j as defined in Table 3 and Table 4.

The relevant time elapsed during which an asset is unavailable shall be measured from when a fault is reported by automatic back indication or by inspection or by a third party report (subject to the exclusions in paragraph 3.12). For the avoidance of doubt, availability means "available for use, independent of any other element".

### **2.B Calculation of Aerodrome Congestion Term**

#### **Basis of rebates**

- 3.24 Except as set out in paragraph 3.36, a rebate shall be payable in respect of departures or arrivals where a Material Event has occurred caused primarily by a failure on the part of the Licensee or the provider of aerodrome air traffic services or their respective agents or contractors as set out in paragraph 3.31 (where 'agents' excludes bodies carrying out activities listed within the annex of EU Ground Handling Directive, 96/67)<sup>10</sup>; and this has generated a Material Operational Impact as defined in paragraph 3.34 below.

#### **Calculation of rebate**

- 3.25 The  $\text{Rebate}_{\text{ACT}}$  shall be calculated as follows:

$$\text{Rebate}_{\text{ACT}} = \text{Min} \left[ 100 \cdot \left( \frac{\text{Rebate}_{\text{ARR}} + \text{Rebate}_{\text{DEP}}}{T_t} \right), \text{MAXRebate}_{\text{ACT}} \right]$$

Where:

$\text{Rebate}_{\text{ARR}} = \sum_{\text{All material events}} V_{\text{ARR}_i}$  is the element of this term related to arrival movements at the airport.

---

10 Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (Official Journal L 272 25/10/1996 p 0036-0045)

## Annex B: Draft service quality rebates and bonuses condition

$\text{Rebate}_{\text{DEP}} = \sum_{\text{All material events}} V_{\text{DEP}_i}$  is the element of this term related to departure movements at the airport.

$\text{MAXRebate}_{\text{ACT}}$  is the maximum annual percentage rebate under the Aerodrome Congestion Term which is 1%.

$T_t$  is the total revenue from airport charges in respect of relevant air services levied at the relevant airport in Relevant Year  $t$ .

and for each Material Event  $i$ :

$v_{\text{ARR}_i}$  is the value in Table 5, dependent on the Maximum Cumulative Arrival Movements Deferred for the  $i^{\text{th}}$  relevant material event as uplifted by inflation in paragraph 3.26; and

$v_{\text{DEP}_i}$  is the value in Table 5, dependent on the Maximum Cumulative Departure Movements Deferred for the  $i^{\text{th}}$  relevant material event as uplifted by inflation in paragraph 3.26;

Where:

Relevant Measurement Period is defined as any period beginning with the Clock-Face Hour preceding the commencement of the material event and ending no later than the next clock-face hour after the material event ends; and

Clock-Face Hour is the period of 60 minutes which for any relevant hour  $xx$ , starts with  $xx:00$  and ends at  $xx:59$ ;

Maximum Cumulative Arrival Movements Deferred is the maximum number of cumulative arrival movements deferred at any of the relevant measurement periods for the particular Material Event, calculated as follows:

$$= A_i \times \sum_{s=1}^{s=\theta} (\text{Expected ARR}_s - \text{Actual ARR}_s)$$

Where:

$s$  denotes any Relevant Measurement Period relating to the particular Material Event;

## Annex B: Draft service quality rebates and bonuses condition

$\theta$  denotes the Relevant Measurement Period relating to that particular material event at which  $\text{ExpectedARR}_s - \text{ActualARR}_s$  reached its maximum.

$\text{Expected ARR}_s$  is the number of expected arrivals in Relevant Measurement Period  $s$  as determined in paragraphs 3.27-3.29;

$\text{Actual ARR}_s$  is the number of actual arrivals in Relevant Measurement Periods

$A_i$  is the proportion of responsibility for the  $i^{\text{th}}$  material event attributed to the Licensee or the provider of aerodrome air traffic services or their respective agents or contractors.

Maximum Cumulative Departure Movements Deferred is the maximum number of cumulative departure movements deferred at any of the relevant measurement periods for the particular Material Event, calculated as follows:

$$= A_i \times \sum_{s=1}^{s=\theta} (\text{Expected DEP}_s - \text{Actual DEP}_s)$$

Where:

$s$  denotes any Relevant Measurement Period relating to the particular Material Event;

$\theta$  denotes the Relevant Measurement Period relating to that particular material event at which  $\text{ExpectedARR}_s - \text{ActualARR}_s$  reached its maximum.

$\text{Expected DEP}_s$  is the number of expected departures in Relevant Measurement Period  $s$  as determined in paragraphs 3.27-3.29;

$\text{Actual DEP}_s$  is the number of actual departures in Relevant Measurement Periods;

$A_i$  is the proportion of responsibility for the  $i^{\text{th}}$  material event attributed to the Licensee or the provider of aerodrome air traffic services or their respective agents or contractors.

3.26

The rebates in Table 5 shall be inflated to outturn prices by:

## Annex B: Draft service quality rebates and bonuses condition

$$= \text{Rebate}_{2012/13 \text{ prices}} \times \left( \frac{\text{PRICE INDEX}_{t-1}}{\text{PRICE INDEX}_{2012/13}} \right)$$

Where:

PRICE INDEX<sub>t-1</sub> is the average monthly value of the CHAW series of the retail price index published with respect to August in Relevant Year t – 1, and

PRICE INDEX<sub>2012/13</sub> is the relevant value of the CHAW index published with respect to August 2012.

### **Expected Arrivals and Departures**

- 3.27 The Expected Arrival Movements and Expected Departure Movements shall be estimates made by the Licensee retrospectively by hour for each Material Event made available to users, on the Licensee's extranet site or in a manner agreed with users, as soon as practicable after the Material Event to which it relates.
- 3.28 The Licensee will use best endeavours to calculate the Expected Arrival Movements and Expected Departure Movements to reflect the relevant movements in each hour in the absence of any Material Event or Material Operational Impact.
- 3.29 These calculations shall have regard to the actual arrival or departure movements during the relevant hour and day in the weeks preceding the relevant hour where there were no Material Events or other significant factors which affected arrivals or departure rates. These calculations can be supplemented by a consideration of other relevant considerations where the Licensee considers this to be appropriate in order to make best estimates.
- 3.30 The Licensee shall set out the basis of its calculations with the estimates.

### **Material Events**

- 3.31 A Material Event is one, or a combination of more than one, of the following:
- a) radar or other critical air traffic control equipment or systems failure;
  - b) tower staff shortages;



## Annex B: Draft service quality rebates and bonuses condition

- c) tower industrial action;
- d) industrial action by the Licensee's operational staff;
- e) closure of runways;
- f) closure of rapid exit taxiways, rapid access taxiways and other runway exit / access taxiways;
- g) closure of aircraft manoeuvring areas;
- h) runway or taxiway lighting system failures;
- i) failure of other critical equipment e.g. fire tenders; or
- j) where bad weather has been forecast and has materialised and the Relevant Bad Weather Equipment as set out in paragraph 3.33 is not available or has not been deployed.

3.32 For the avoidance of doubt the Licensee will not be liable to pay rebates for disruption due to bad weather unless one or more of the factors above apply.

3.33 The Relevant Bad Weather Equipment is defined as in respect of:

- a) Low visibility procedures:
  - i) Instrument Landing System (ILS), Instrumented Runway Visual Range (IRVR) system, Surface Movement Radar (SMR), Microwave Landing System (MLS)\* and Advanced Surface Movement Guidance and Control System (ASMGCS)\* (\* where installed)
  - ii) Operational availability of lighting and signage systems to enable Category 2/3 operations to continue
- b) Ice
  - i) Airfield (i.e. runways, taxiways and manoeuvring area) and aircraft stands anti/de-icing equipment and media, (as specified to the AOC)
  - ii) Operational availability and deployment of trained staff to operate the equipment
- c) Snow

## Annex B: Draft service quality rebates and bonuses condition

- i) Runway and taxiway snow clearance equipment (as specified to the AOC by the requirements of paragraph 3.37.)
- ii) Operational availability and deployment of trained staff to operate the equipment.

### **Material Operational Impact**

3.34 A Material Operational Impact is defined:

- a) For arrivals where:
  - i) a flow rate restriction (ATFM or local<sup>11</sup>) is applied which is less than the declared runway scheduling limit: and
  - ii) the cumulative number of actual movements is less than the cumulative reference number of movements by at least four movements for any relevant measurement period during the period before the flow rate restriction is removed.
- b) For departures:
  - i) the cumulative number of actual movements is less than the cumulative reference number of movements by at least four movements for any relevant measurement period during the period of the material effect.

### **Proportion of responsibility**

3.35 Where the Licensee reasonably considers that a Material Event with a Material Operational Effect has been made more severe by contributing causes beyond the control of the airport or its agents, it shall estimate the proportion of the effect which it considers to have been due to the Material Event as set out in paragraph 3.31.

### **Exceptions**

3.36 The following sets out the circumstances when the unavailability of facilities will not require the rebates to be payable:

- a) where the material event is due to runways, taxiways, other aircraft manoeuvring areas, or associated airfield lighting taken

---

<sup>11</sup> ATFM restrictions are air traffic flow movement restrictions imposed through the central flow management unit of Eurocontrol. Local restrictions are of a temporary duration and originate from the Tower watch supervisor.

## Annex B: Draft service quality rebates and bonuses condition

out of service whilst a major investment project is undertaken in the vicinity and where this is done in consultation with users and the timing of work has been determined after consultation with the airport AOC, and the period specified in advance. If work extends beyond this period, then rebates will be payable if the work causes material events, which pass the tests in paragraphs 3.31 and 3.34; or

- b) where the material event is due to runways, taxiways, other aircraft manoeuvring areas, or associated airfield lighting taken out of service for replacement or major refurbishment work or tower related works and when the timing of work has been determined after consultation with the airport AOC, and the period specified in advance. If work extends beyond this period, then rebates will be payable if the work causes material events, which pass the tests in paragraphs 3.31 and 3.34.

### **Data Collection and Communication**

3.37

The Licensee shall:

- a) provide to the AOC prior to each Winter season a list of the anti/de-icing equipment and media and runway and taxiway snow clearance equipment in commission at the airport;
- b) compile a log of all the events at the airport which it considers could have a potentially material effect on operations at the airport (the Super-Log). This will include ATFM and local restrictions imposed on the operations at the airport along with Material Events relating to departures (which may not necessarily have been linked to an ATFM or local restriction). The Licensee may also include other events where it considers that this materially adds to the value of the log as a complete record;
- c) report to Relevant Parties the new events that have been recorded each week as soon as practicable after the end of the relevant week on its extranet site or in such other format as may be agreed by the Licensee and Relevant Parties; and
- d) report to Relevant Parties as soon as practicable after the relevant week the calculations of the maximum number of movements deferred for each Material Event set out under paragraph 3.31 above and the assumptions supporting the

## Annex B: Draft service quality rebates and bonuses condition

expected level of arrivals or departures in each hour during the course of the Material Event and any estimate of the proportion of responsibility as set out in paragraph 3.35.

### 3. Calculation of Bonus Factor

3.38  $B_t$  is a bonus factor based on performance in respect of Specified Elements  $k$  in Relevant Year  $t$  and shall be calculated as follows:

$$B_t = \sum_{j=\text{April}}^{j=\text{March}} \sum_k \text{Max} \left[ 0, \text{Min} \left[ \text{BNS}(\text{TN})_{kj}, \text{BNS}(\text{TS})_{kj} \right] \right]$$

Where:

Specified Elements are the elements set out in Table 6 and

For each month  $j$  and specified element  $k$ ;

$$\text{BNS}(\text{TN})_{kj} = \frac{1}{12} \times \text{MAB}_k \frac{\text{Min}[\text{UPL}_k, \text{MP}(\text{TN})_{kj}] - \text{LPL}_k}{\text{UPL}_k - \text{LPL}_k}$$

$$\text{BNS}(\text{TS})_{kj} = \frac{1}{12} \times \text{MAB}_k \frac{\text{Min}[\text{UPL}_k, \text{MP}(\text{TS})_{kj}] - \text{LPL}_k}{\text{UPL}_k - \text{LPL}_k}$$

For each Specified Element  $k$ ,  $\text{LPL}_k$ ,  $\text{UPL}_k$  and  $\text{MAB}_k$  have the values assigned in Table 6; and

$\text{MP}(\text{TN})_{kj}$  and  $\text{MP}(\text{TS})_{kj}$  are the performances in Gatwick's North Terminal and Gatwick's South Terminal respectively, for element  $k$  in month  $j$ .

### 4. General matters

#### Rounding

3.39 In this schedule, the calculation and reporting of all performance terms shall be to two places of decimals (in the case of percentages to 2 decimal places of a percentage point).

#### Publication of information

3.40 At the airport, the Licensee shall publish in each terminal, on a monthly basis, the performance against the standards for each of the terminals at the airport with respect to:

- a) Departure lounge seat availability (QSM);

## Annex B: Draft service quality rebates and bonuses condition

- b) Cleanliness (QSM);
- c) Way-finding (QSM);
- d) Flight information (QSM);
- e) Security (QSM);
- f) Central search;
- g) Transfer search;
- h) Inter terminal transit system availability.

3.41 The Licensee shall also publish on its website on a monthly basis, the performance against the standards for each of the terminals at the airport with respect to all elements specified in Table 3 and Table 4 and the Aerodrome Congestion Term element. The Licensee shall also publish on its website on a monthly basis the estimated financial impacts, in terms of rebates and bonuses, generated by the performance relating to all the service quality elements.

### **Definitions**

3.42 In this schedule:

- a) Airport Charges has the same meaning as in Regulation 3(1) of the Airport Charges Regulations 2011 (SI 2011/2491);
- b) Relevant Parties are airlines that have paid Airport Charges in the relevant month in respect of passenger services;
- c) Relevant Year means the period of twelve months ending with 31 March in each year;
- d) The AOC means the Airline Operators Committee;
- e) Terminal is a main passenger terminal and this excludes general aviation facilities;
- f) A relevant dead-band month is:
  - i) November,
  - ii) January,
  - iii) February, or
  - iv) March (where Easter Sunday falls on or after 7 April), or;

Annex B: Draft service quality rebates and bonuses condition

- v) a month agreed to in writing for the relevant asset or element and terminal by the Licensee and the AOC.

Annex B: Draft service quality rebates and bonuses condition

## 5. Tables

**Table 3: Gatwick South Terminal**

i	Element	Metric	Relevant time over <sup>12</sup> which performance counts for rebates	Standardi	Rebate per month Pij (for all j)	Maximum annual rebate ANNMAXi
1	Departure lounge seat availability	QSM scores - Moving annual average	Last 12 months.	4.00	0.0600%	0.3600%
2	Cleanliness			4.10	0.0600%	0.3600%
3	Way-finding			4.10	0.0600%	0.3600%
4	Flight information			4.20	0.0600%	0.3600%
5	Security			Publication only		
6	Central Search - first element	Percentage of queue times measurements < 5 minutes <sup>13</sup>	02:30-22:30 or period agreed locally for each terminal between the Licensee and terminal AOC	95.00% <sup>14</sup>	0.1417%	0.8500%

12 Where relevant, if the airport and the local AOC fail to agree a period for a particular element, the default time period will be the period specified for central search.

13 This metric will become "Percentage of passengers queuing less than 5 minutes" after the end of March 2015

14 The Standard after the end of March 2015 is still to be defined.

Annex B: Draft service quality rebates and bonuses condition

		Percentage of queue times measurements < 15 minutes <sup>15</sup>	02:30-22:30 or period agreed locally for each terminal between the Licensee and terminal AOC	98.00% <sup>16</sup>		
7	Central Search - second element	Proportion of days in month j in which there was at least a single queue time measurement exceeding the standard	02:30-22:30 or period agreed locally for each terminal between the Licensee and terminal AOC	30 minutes	0.5000%	0.4500%
8	Transfer search	Percentage of queue times measurements < 10 minutes <sup>17</sup>	Period agreed locally for each terminal between the Licensee and terminal AOC	95.00% <sup>18</sup>	0.0333%	0.2000%
9	Staff search	Percentage of 15 minute measurements (South Terminal) that are less than 5 minutes	Period agreed locally for each terminal between the Licensee and terminal AOC	95%	0.0275%	0.1650%

15 This metric will become "Percentage of passengers queuing less than 15 minutes" after the end of March 2015

16 The Standard after the end of March 2015 is still to be defined.

17 This metric will become "Percentage of passengers queuing less than 10 minutes" after the end of March 2015

18 The Standard after the end of March 2015 is still to be defined.



Annex B: Draft service quality rebates and bonuses condition

		Percentage of 15 minute measurements (Jubilee House & Concorde House) that are less than 10 minutes	Period agreed locally for each terminal between the Licensee and terminal AOC	95%	0.0275%	0.1650%
10	Control posts <sup>19</sup> search	Percentage of vehicles waiting less than 15 minutes at each control post group	Period agreed locally for each terminal between airport and terminal AOC	95%	0.0550%	0.3300%
11	Passenger sensitive equipment (general)	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0583%	0.3500%
12	Passenger sensitive equipment (priority)	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0583%	0.3500%
13						Intentionally omitted
14	Arrivals reclaim (baggage carousels)	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0417%	0.3500%

<sup>19</sup> The measured element for control posts will be the average for the airport as a whole and will therefore be at the same level for all relevant terminals at Gatwick.

Annex B: Draft service quality rebates and bonuses condition

15	Outbound baggage system	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0333%	0.2000%
16	Stands	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0417%	0.2500%
17	Jetties	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0500%	0.3000%
18	Pier Service	Moving annual average % passengers served	Last 12 months.	95.00% <sup>20</sup>	0.0500%	0.3000%
19	Fixed electrical ground power	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0250%	0.1500%

---

20 Subject to exceptions to be agreed by the Licensee and the AOC

Annex B: Draft service quality rebates and bonuses condition

**Table 4: Gatwick North Terminal**

i	Element	Metric	Relevant time over <sup>21</sup> which performance counts for rebates	Standard <sub>i</sub>	Rebate per month P <sub>ij</sub> (for all j)	Maximum annual rebate ANNMAX <sub>i</sub>
1	Departure lounge seat availability	QSM scores - Moving annual average	Last 12 months.	4.00	0.0600%	0.3600%
2	Cleanliness			4.10	0.0600%	0.3600%
3	Way-finding			4.10	0.0600%	0.3600%
4	Flight information			4.20	0.0600%	0.3600%
5	Security			Publication only		
6	Central Search - first element	Percentage of queue times measurements < 5 minutes <sup>22</sup>	02:30-22:30 or period agreed locally for each terminal between the Licensee and terminal AOC	95.00% <sup>23</sup>	0.1417%	0.8500%
		Percentage of queue times measurements < 15 minutes <sup>24</sup>	02:30-22:30 or period agreed locally for each terminal between the Licensee and terminal AOC	98.00% <sup>25</sup>		

<sup>21</sup> Where relevant, if the airport and the local AOC fail to agree a period for a particular element, the default time period will be the period specified for central search.

<sup>22</sup> This metric will become "Percentage of passengers queuing less than 5 minutes" after the end of March 2015

<sup>23</sup> The Standard after the end of March 2015 is still to be defined.

<sup>24</sup> This metric will become "Percentage of passengers queuing less than 15 minutes" after the end of March 2015

<sup>25</sup> The Standard after the end of March 2015 is still to be defined.

Annex B: Draft service quality rebates and bonuses condition

7	Central Search - second element	Proportion of days in month j in which there was at least a single queue time measurement exceeding the standard	02:30-22:30 or period agreed locally for each terminal between the Licensee and terminal AOC	30 minutes	0.5000%	0.4500%
8	Transfer search	Percentage of queue times measurements < 10 minutes <sup>26</sup>	Period agreed locally for each terminal between the Licensee and terminal AOC	95.00% <sup>27</sup>	0.0333%	0.2000%
9	Staff search	Percentage of 15 minute measurements (North Terminal) that are less than 5 minutes	Period agreed locally for each terminal between the Licensee and terminal AOC	95%	0.0275%	0.1650%

---

26 This metric will become "Percentage of passengers queuing less than 10 minutes" after the end of March 2015  
 27 The Standard after the end of March 2015 is still to be defined.

Annex B: Draft service quality rebates and bonuses condition

		Percentage of 15 minute measurements (Jubilee House & Concorde House) that are less than 10 minutes	Period agreed locally for each terminal between the Licensee and terminal AOC.	95%	0.0275%	0.1650%
10	Control posts <sup>28</sup> search	Percentage of vehicles waiting less than 15 minutes at each control post group	Period agreed locally for each terminal between airport and terminal AOC.	95%	0.0550%	0.3300%
11	Passenger sensitive equipment (general)	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0583%	0.3500%
12	Passenger sensitive equipment (priority)	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0500%	0.3500%
13	Inter-terminal transit system	% time one car available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0583%	0.3000%

<sup>28</sup> The measured element for control posts will be the average for the airport as a whole and will therefore be at the same level for all relevant terminals at Gatwick.

Annex B: Draft service quality rebates and bonuses condition

14	Arrivals reclaim (baggage carousels)	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0417%	0.3500%
15	Outbound baggage system	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0333%	0.2000%
16	Stands	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0417%	0.2500%
17	Jetties	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC	99%	0.0500%	0.3000%
18	Pier Service	Moving annual average % passengers served	Last 12 months.	95.00% <sup>29</sup>	0.0500%	0.3000%
19	Fixed electrical ground power	% time available	Period agreed locally for each terminal between the Licensee and terminal AOC.	99%	0.0250%	0.1500%

---

29 Subject to exceptions to be agreed by the Licensee and the AOC

Annex B: Draft service quality rebates and bonuses condition

**Table 5: ACT Rebates**

<b>Maximum cumulative movements deferred</b>	<b>Gatwick Rebate (£000) (2012/13 prices)</b>
0 to 3	0.0
4 or 5	3.7
6 or 7	5.9
8 or 9	8.5
10 or 11	11.7
12 or 13	15.7
14 or 15	20.4
16 or 17	25.6
18 or 19	31.6
20 or more per day	36.6

Annex B: Draft service quality rebates and bonuses condition

**Table 6: Bonuses**

<b>k</b>	<b>Specified Element</b>	<b>Metric</b>	<b>Lower performance Limit (LPL<sub>k</sub>)</b>	<b>Upper Performance Limit (UPL<sub>k</sub>)</b>	<b>Maximum annual bonus (MAB<sub>k</sub>)</b>
1	Departure lounge seat availability	QSM scores - Moving annual average	4.20	4.50	0.3600%
2	Cleanliness		4.30	4.60	0.3600%
3	Way-finding		4.40	4.70	0.3600%
4	Flight information		4.50	4.80	0.3600%



## **Annex C Consultation on a draft penalties policy for penalties issued under Part 1 Chapter 1 of the Civil Aviation Act 2012.**

---

### **Background**

1. The Civil Aviation Act 2012 (the Act) allows the CAA to impose appropriate and proportionate penalties on:
  - i. licence holders for breach of licence or breach of an enforcement order – the CAA may impose a fixed amount up to 10% of the company’s qualifying turnover and/or a daily amount up to 0.1% of its qualifying turnover;
  - ii. any person who, without reasonable excuse, fails to provide information or documents required by CAA by notice under its powers in Chapter 1 of the Act – the CAA may impose a fixed amount up to £2m and/or a daily amount up to £100,000; and
  - iii. any person who knowingly or recklessly provides false or misleading information to the CAA or who intentionally alters, suppresses or destroys a document that they are required to provide by a notice issued by the CAA under Chapter 1 of the Act – there is no specified limit on penalties for this offence.
2. The Act requires the CAA to consult on and publish a statement of its policy with respect to imposing penalties under Chapter 1 and determining their amount. The CAA considers that a single policy is suitable for all three types of penalty as the principles and criteria it considers should be the same whenever it decides to impose a penalty.
3. In preparing the draft penalties policy, the CAA has had regard to its s1 duties, its published enforcement policy, the Macrory principles on imposing penalties<sup>30</sup> and the penalties statements published by other regulators.
4. The statement starts with a factual description of the CAA's powers to impose penalties and its procedural obligations. The CAA then separates out the decisions on whether a penalty is appropriate and what the amount should be, in line with its obligations under the Act.

### **Is a penalty appropriate?**

5. The draft penalties statement sets out that the primary purpose in deciding whether to impose a penalty should be to incentivise future compliance by both the offender and others with similar obligations, and to deter non-compliance. In

---

<sup>30</sup> See footnote 1 in the draft penalties statement in the Appendix.

assessing whether a penalty is appropriate in each case, the CAA must also have regard to its s1 duties and the Macrory principles. The draft penalties statement also makes it clear that, although the CAA has an alternative enforcement mechanism for civil proceedings, it would normally favour the imposition of penalties.

### **Determining the amount – the starting point**

6. The CAA considers that the penalty should be proportionate to the offence, so the starting point should be based on the seriousness of the offence including the degree of harm done to the consumer or other market participants. The CAA also proposes that it should take into account at this stage how long the person has been non-compliant and whether they have gained from the non-compliance, either financially or otherwise.
7. The degree of culpability is also an important factor in determining the seriousness. If the offender acted knowingly, intentionally, recklessly or negligently then the starting point of the penalty would be higher, if it was accidental or inadvertent, the starting point may be lower.

### **Determining the amount – mitigating and aggravating factors**

8. The CAA proposes that it allows for mitigating and aggravating factors to be taken into account to adjust the amount of any penalty. This allows greater flexibility to take all the relevant factors into account. The proposed penalties statement includes a non-exhaustive list of factors that could be taken into account. These are general factors which could be considered either aggravating or mitigating, depending on the circumstances of the case. Most of these factors point to the culture and attitude of the organisation towards compliance, particularly at senior levels.
9. One factor that is different regards allowing for reparations as a mitigating factor. Several regulators allow for any compensation or other reparations that the licensee may have made to those consumers directly affected by the breach. Ofwat's legislation specifically allows for it to allow for undertakings and ORR's penalties statement has allowed for the possibility of reparations as a mitigating factor in determining the amount. Ofgem's policy does not specifically mention reparations but in May last year it reduced a £4.5m penalty imposed on EDF to £1.00 due to compensation payments. The aim behind these policies is to ensure that the money remains in the industry to benefit those most affected by the breach.
10. The CAA believes there could be circumstances where a licensee could offer to pay for a capital project for the benefit users that would not be included in the RAB. Although this would not necessarily benefit those directly affected at the time of the breach, it would benefit future users.

**Determining the form of a penalty – fixed or daily amounts**

11. The draft penalties statement also includes a section setting out the CAA's proposed our criteria for deciding whether to impose a fixed and/or a daily amount. The CAA's principle consideration will be to balance the need to return to compliance as quickly as possible with its aim to incentivise future compliance, while keeping the overall penalty proportionate to the seriousness of the offence. So, for example, it could adjust the level of a fixed penalty downwards if it were also imposing a daily amount that was likely to be payable for a prolonged period.

## APPENDIX A TO ANNEX C

# Draft penalties policy for penalties issued under Part 1 Chapter 1 of the Civil Aviation Act 2012

---

### BACKGROUND

1. Section 58 of the Civil Aviation Act 2012 (the Act) provides that the CAA must prepare and publish a statement of policy with respect to imposing penalties under sections 39, 40, 51 and 52, and determining the amount of such penalties. By virtue of section 58(3), when imposing such a penalty or determining its amount, CAA must have regard to the most recent policy statement.
2. Under section 58(4) of the Act, when preparing a statement of policy, the CAA must consult such persons as it considers appropriate. The CAA consulted on this policy in May 2013. In addition, the CAA published its wider Regulatory Enforcement Policy in October 2012<sup>31</sup>.
3. This penalties statement refers to the CAA's powers to impose a penalty on a person under:
  - i. section 39 of the Act, for contravention of a licence condition: the CAA may impose a fixed amount that must not exceed 10% of the licensee's qualifying turnover and/or a daily amount up to 0.1% of its qualifying turnover. A daily amount can only be imposed if the contravention has been continuous since the end of the representation period for the relevant contravention notice;
  - ii. section 40 of the Act, for contravention of an enforcement order: the CAA may impose a fixed amount that must not exceed 10% of the licensee's qualifying turnover and/or a daily amount up to 0.1% of its qualifying turnover;
  - iii. section 51 of the Act, to enforce compliance with an information notice under section 50: the CAA may impose a fixed amount that must not exceed £2m and/or a daily amount up to £100,000; and
  - iv. section 52 of the Act, for the provision of false or misleading information, or the alteration, suppression or destruction of a document required to be produced under section 50, under a licence condition or if the person knows that the CAA is likely to use the information for the purpose of carrying out its functions under Chapter 1 of the Act: there is no limit on the amount that the CAA may impose for this offence.
4. A penalty under each of these sections must be such amount as the CAA determines to be appropriate and proportionate to the failure or action in respect of which it is imposed. The period during which daily amount accumulate must be such period as the CAA considers appropriate.
5. Any sums received by the CAA by way of a penalty under the Act must be paid into the Consolidated Fund operated by the Treasury.

---

<sup>31</sup> The enforcement policy sets out the CAA's approach to enforcement generally, using a proportionate and risk-based approach, taking independent, evidence-based decisions and including its approach to publicising enforcement action in the interests of the consumer and the public. It can be found at <http://www.caa.co.uk/default.aspx?catid=2516>

6. The Act lays out procedural requirements to be followed by the CAA, both before and after imposing a penalty. These include giving the person a notice that the CAA proposes to publish a penalty, specifying the amount and setting out the reasons for the proposal. The notice must be published and sent to relevant airport operators and providers of air transport services, or their representatives. The CAA must allow at least 21 days for consultation and must consider any representations made within that period. As soon as practicable after imposing a penalty, the CAA must notify the person in a similar manner to the first notice.
7. While section 58 requires the statement of policy to address penalties specifically, it should be noted that under section 51(1)(b), it is open to the CAA, in the event of non-compliance with a notice under section 50, to either impose a penalty, or enforce the duty to comply with the notice by means of an injunction, or both.
8. The person receiving a penalty may appeal to the Competition Appeals Tribunal under sections 47 and 55.

### **IS A PENALTY APPROPRIATE?**

9. The CAA's primary enforcement objective is to protect users of air transport services and the public by encouraging both the aviation community generally and individuals to comply with their obligations under the Act or their licence and to deter non-compliance. The CAA's primary objective in setting a penalty is to change the future behaviour of the person so that they are better able to comply with all their obligations, and to deter non-compliance in general. The CAA also aims to incentivise others to comply with their own obligations under the Act or under a licence.
10. In deciding whether a penalty is appropriate, the CAA will take full account of the particular facts and circumstances of non-compliance, including any representations made in response to the penalty notice given and published under the procedures in sections 41 and 53.
11. The CAA must have regard to its duty to be transparent, accountable, proportionate and consistent, and to target only those cases where action is needed. It will also take account of the six penalty principles set out in the 2006 Macrory report "Regulatory Justice: Making Sanctions Effective"<sup>32</sup>.
12. Where there is an additional and alternative enforcement mechanism available to the CAA by way of civil proceedings for an injunction, or in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, the CAA's approach will normally be to favour the imposition of penalties over seeking injunctive relief, on the basis that this offers the most proportionate and targeted way of encouraging compliance and deterring non-compliance.
13. The CAA will, if appropriate in the context of assessing whether a penalty is appropriate for a breach of economic regulatory requirements, take into account any related ongoing safety investigations under the licence holder's aerodrome licence.

---

<sup>32</sup>

The Macrory report can be found at: <http://www.berr.gov.uk/files/file44593.pdf>. In summary, a penalty should

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issues, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

### **DETERMINING THE AMOUNT OF THE PENALTY - PROPORTIONALITY**

14. The amount of the penalty must be such as the CAA determines to be appropriate and proportionate to the failure in respect of which it is imposed. When determining the amount of a penalty, CAA will also consider whether any adjustments are appropriate to reflect mitigating or aggravating factors in the particular case.
15. A penalty should be proportionate to the seriousness of the non-compliance, and this will be CAA's usual starting point in considering the general level of the penalty. In considering this, the CAA will look at the benefits and opportunities foregone by, or harm caused to, users of air transport services, the wider public and other market participants as a result of the offence. The general level of penalty will also be influenced by the duration of the non-compliance and any gain (financial or otherwise) that the person has made as a consequence.
16. The CAA will also consider the culpability of the person, including whether they have acted negligently, recklessly, knowingly or intentionally, or whether the non-compliance was accidental or inadvertent.
17. Specifically where false or misleading information is provided (pursuant to a formal notice), a penalty may be imposed where knowledge of this is shown, or, absent that, recklessness. Where a document has been altered, suppressed or destroyed, a penalty may be imposed if an intention to do so can be shown. The seriousness of such offences is apparent from the fact that unlike non-provision of information, there is no limit on the penalty that may be imposed for these offences.

### **DETERMINING THE AMOUNT OF THE PENALTY – MITIGATING AND AGGRAVATING FACTORS**

18. The CAA will adjust the general penalty level up or down to take account of relevant mitigating and aggravating factors, according to the specific facts and circumstances of the case. It will apply an overall adjustment reflecting the net effect of such factors. The following factors may be considered, as appropriate, in this regard:
  - i. the speed with which steps have been taken to return to compliance, including whether these were initiated by the person or in response to CAA's actions;
  - ii. any steps which have been taken to minimise the risk of non-compliance recurring;
  - iii. the extent of involvement of directors or senior management in the action or inaction which caused the non-compliance or their lack of appropriate involvement in action to remedy it;
  - iv. repeated or continuing infringement of their obligations;
  - v. whether the person reported the non-compliance or tried to conceal it;
  - vi. the existence or absence of proactive preventative measures and internal mechanisms to ensure compliance generally;
  - vii. cooperation with the CAA's investigation
  - viii. whether the breach could have safety implications, to the extent that these have not been addressed by enforcement action under other legislation; and
  - ix. any actions which have been or will be taken to make worthwhile restoration to those who suffered the consequences of the non-compliance, where any committed expenditure is verifiably additional.

19. Other mitigating or aggravating factors may arise depending on the specific facts and circumstances of the case.
20. The net effect of these factors may be significant, capable in the most favourable circumstances of reducing the penalty to zero, or in the worst cases, to increase it several fold within the limits specified in the Act.

#### **DETERMINING THE FORM OF THE PENALTY – FIXED AND/OR DAILY AMOUNTS**

21. The CAA's decision on whether to impose either or both a fixed amount and/or a daily amount for non-compliance will be based on the factors set out in sections 3 and 4 above, particularly having regard to keeping the overall penalty proportionate. The appropriate balance between the two will depend on the specific facts and circumstances of the case and will be designed to incentivise a return to compliance as soon as possible and to incentivise future compliance.
22. It is open to the CAA to propose to vary the amount of the penalty (and implicitly the balance between any fixed and daily amounts), subject to further notice requirements, enabling the penalty to be more targeted to the particular case should emerging circumstances suggest that this is necessary.

#### **REVISION OF THE POLICY**

23. Section 58 of the Act provides that the CAA may revise the statement of policy, and if it does so, it must publish the revised statement. Prior to doing so CAA must first consult such persons as it considers appropriate.