

- 2.3 An operation not at the allocated slot time or the operation of a single additional flight on any one day can have a significant impact on the level of delays for all other air carriers, the majority of which are trying to operate to their allocated slots. The purpose of UK Regulation 14 and the Code is to ensure that, in a proportionate and fair way, all slots are used at the allocated slot time and in the manner indicated when the slots were allocated. The efficient working of a coordinated airport and the integrity of the slot allocation system requires all operations, at any time of the day or night, to be planned to operate at the allocated slot time and operate in a way which meets all the terms of this slot allocation.
- 2.4 The Code is designed to ensure that the UK Regulations deal firmly with repeated and intentional slot misuse. They do not penalise normal, day to day, variations in scheduled landing and take-off times affected by factors beyond the control of air carriers.

A copy of the Code is attached as Appendix 1.

3 THE PURPOSE OF THIS DOCUMENT

As expected, the first year of applying the Code has brought to light some ambiguities, and omissions, in the drafting of the Code. Proposals to deal with these issues are the subject of this consultation.

Please visit the ACL web site at www.acl-uk.org/consultation where you can download the Response Form in MS Word format containing a summary of all the questions raised in this consultation. A blank section has been included at the end where further comments can be added.

Alternatively you can visit the ACL web site www.aclconsultation.co.uk and submit your response online.

It is strongly recommended that you read the consultation document carefully in full before you answer any of the questions raised in the consultation.

When you submit your comments please give reasons and evidence to support your views where you can. More weight will be attached to reasoned arguments than yes/no responses to the questions in the consultation.

Please ensure that in whatever format you submit a response to this consultation, you also fill in your personal details (name, company/organisation and email address) to assist ACL with the analysis of responses.

Throughout this document text from the Code is shown in italics with deleted text from the Code shown in ~~strikethrough~~ format and added text in bold format.

4 ACL's 2007 ANNUAL REPORT ON THE CODE

The report produced by ACL on the working of the Code during 2007 concluded that the introduction of the Code has led to a significant improvement in the behaviour of air carriers: greater compliance with the allocated slots and a significant reduction in the number of operations without a slot. Airport capacity is, as a result, used more efficiently.

This step change in air carrier behaviour is unlikely to be repeated but the Coordinator will seek to sustain this level of improvement in slot compliance and seek further improvements.

These changes in behaviour have been achieved whilst applying relatively few financial penalties. ACL would add however that, in the first year of its operation, financial penalties have been quite modest. If there are continuing misuses by air carriers then the fines for misuse could well increase. Now that the UK Regulations, and the Code, have been in force for over a year, and their scope is now more or less clear, ACL believes that, in appropriate cases, future fines for misuse could well be higher, following the guidelines and benchmarks for fining set out in the Code.

A copy of ACL's 2007 Annual Report is attached, as Appendix 2.

5 THE PROPOSED AMENDMENTS

We set out below the changes which we propose to the Code.

5.1 Preamble to the Enforcement Code

Section 1 of the Code (EU SLOTS REGULATION AND SLOT MISUSE) below contains a lengthy preamble to 'set the scene' and to summarise the extensive industry consultation process which resulted in the Code.

It is no longer necessary to retain this extensive preamble and it is therefore proposed to modify Section 1 of the Code as follows:

'1.1 Article 14.5 of EEC Regulation 95/93, as now amended by Regulation 793/2004, (the Council Regulation) requires all Member States to ensure that effective, proportionate and dissuasive sanctions, or equivalent measures, are available to deal with serious misuse of allocated slots.

1.2 ~~On 13 July 2005 the Department for Transport (DfT) issued a consultation document to stakeholders in the aviation industry on the best means to introduce sanction mechanisms to control the misuse of slots at coordinated airports in the United Kingdom.~~

CONSULTATION ON THE MISUSE OF SLOTS ENFORCEMENT CODE

- 1.3 ~~On 13 April 2006 the DfT published draft 'Misuse of Slots Rules' and 'Procedures and Guidelines', produced jointly by the DfT and Airport Coordination Limited (ACL or the Coordinator) being the Coordinator for all coordinated airports in the United Kingdom) setting out the proposed basis of operation of the scheme. The DfT also published a draft Statutory Instrument to implement Council Regulation 793/2004 (which includes slots sanctions) into UK law.~~
- 1.4 ~~On 27 April 2006 the DfT and ACL held a seminar with industry representatives to discuss and clarify the draft papers circulated on 13 April 2006 and invited written comments on the draft proposals by 18 May 2006 so that the views of the industry could be taken into account.~~
- 1.5 Following consultation with stakeholders in the aviation industry, the Secretary of State for Transport adopted the Airports Slot Allocation Regulations 2006 (the UK Regulations), which took effect from 1st January 2007. UK Regulation 14 prohibits the repeated and intentional misuse of allocated slots by air carriers. UK Regulation 18(1) requires the Coordinator to adopt an enforcement code to make provision for the manner in which the Coordinator will enforce UK Regulations 7, 15 and 16.
- 1.6 This enforcement code (the Code) was adopted by the Coordinator to take effect on the same date that the UK Regulations came into effect.'

Question 1

Do you agree that it is no longer necessary to retain the extensive preamble in Section 1 of the Code?

5.2 EU Slots Regulation and Slot Misuse

Section 1.1 of the Code explains the rationale for introducing an Enforcement Code so as to give effect to the UK Regulations.

One issue which is explicit in the Code, and which is in the list of Types of Misuse in Section 4.1, is that it is necessary to have a slot allocated by the Coordinator for all operations at a coordinated airport, except for flights which are exempt from slot allocation e.g. State Flights, emergency landings and humanitarian flights.

In order to remove any residual doubt on this, ACL proposes to make this requirement to hold a slot absolutely clear in the Code, by amending Section 2.2 as follows:

2.2 The objective of UK Regulation 14(4) and this Code is to give effect to Article 14.5 of the Council Regulation. They aim to prevent the repeated and intentional misuse of slots, which includes operating without an allocated slot, at the coordinated airports in the United Kingdom – currently Heathrow, Gatwick, Manchester and Stansted - and such other airports as may be designated from time to time as coordinated pursuant to Article 3 of the Council Regulation.

Question 2

Do you think that the Code, with the revision now proposed, is clear that operating without a slot allocated by the Coordinator at a coordinated airport is a sanctionable form of slot misuse?

5.3 Sanctions Process

The last sentence of Section 2.4 of the Code states that ‘Sanctions will ordinarily only be applied when the normal coordination process and dialogue between the Coordinator and the air carrier has failed to resolve the air carrier’s scheduling problems.’

In practice the dialogue with the air carrier to develop a scheduling solution may continue for some time, even while the air carrier is committing repeated misuse of the slots.

ACL therefore proposes that this last sentence of section 2.4 should be deleted from the Code to avoid airlines seeking to use this as an excuse to deny the Coordinator’s ability to impose a sanction whilst the dialogue, and misuse, continues.

Question 3

Do you agree that the sentence: ‘Sanctions will ordinarily only be applied when the normal coordination process and dialogue between the Coordinator and the air carrier has failed to resolve the air carrier’s scheduling problems.’ should be deleted from Section 2.4 of the Code?

5.4 Meaning of "Repeatedly" and "Intentionally"

The Code may not be quite clear enough that for misuse of a slot to be repeated, the second or subsequent misuse needs to be of the same ‘type’ of misuse, and that all slot misuse must be intentional.

CONSULTATION ON THE MISUSE OF SLOTS ENFORCEMENT CODE

In the Types of Slot Misuse dealt with by the Code only the second type of misuse listed in Section 4.1 ("ad hoc" slot misuse) explicitly states that to be repeated misuse should be the same type of misuse. In reality each misuse must be of the same type of misuse to be treated as repeated misuse and thus liable for a sanction.

Furthermore only the first and second types of misuse set out in section 4.1 explicitly state that they must be committed intentionally, whereas in reality each type of misuse must be intentional in order to be liable for a sanction.

ACL therefore proposes to amend the text in the introduction and the bullets in Section 4.1 (types of slot misuse) to add an overarching reference to the need for all types of misuse to be both repeated and intentional for them to be considered as misuse.

Section 4.1 would therefore be amended as follows:

- 4.1 There are several types of misuse addressed by UK Regulation 14(1) and this Code. The type of misuse must be both repeated and intentional before it can be liable to a possible sanction. To be treated as repeated misuse it should be of the same type at a particular airport. Four common types of misuse are:
- x ~~Intentional~~ Operation of a series of air services at times significantly different from the allocated slots.
 - x ~~Intentional~~ Operation of an ad hoc air services at a times significantly different from the allocated slots ~~(such ad hoc slot misuse must be repeated before any sanctions are applied);~~
 - x The use of a slots in a significantly different way from that indicated at the time of allocation where such use causes prejudice to airport or air traffic operations e.g. operating with a larger aircraft than the slot allocated at a terminal constrained airport, operating at night without an allocation of night movements/night quota, or operating with a noisier aircraft than that approved by the Coordinator.
 - x Operation of an air service without an allocated slot.

Question 4

Do you agree to this clarification of section 4.1 as to how misuse must be repeated and intentional before an air carrier can be liable for a slot sanction?

5.5 Types of Slot Misuse Covered by the Code

There are currently four types of slot misuse covered by Section 4.1 of the Code.

Section 4.2 of the Code acknowledges that this list is not exhaustive and there may be other forms of slot misuse which are covered by UK Regulation 14 and the Code, which become identified over time, and which may also need to be addressed by the Code in the future.

Analysis of operational performance at coordinated airports in the UK indicates that there is a significant problem with 'no shows' i.e. airlines failing to use the slots allocated to them and failing to give advance notice to cancel the slots thereby effectively wasting scarce airport capacity which could have been reallocated to ad hoc services.

Section 5.2 of the Code acknowledges that 'In the case of a "no show" or a failure to use a slot the mere non-arrival of the flight can be sufficient to demonstrate intent not to use an allocated slot.'

The following table shows the scale of the problem of 'no shows' at the four coordinated airports in the UK.

Slot Wastage due to 'No Shows' - 2007

Heathrow	1274
Gatwick	1790
Stansted	2616
Manchester	3255

It is important to note that not every failure to use an allocated slot is an intentional misuse as there may be mitigating circumstances.

The 'use it or lose it' rule in the EC Regulation is designed to discourage the late handback of slots (after 31 January for a Summer season and 31 August for a Winter season) but it is inadequate for controlling this type of misuse as can be seen in the table of slot wastage above.

The Coordinator therefore proposes to add to the list of types of slot misuse covered by the Code, the intentional failure to utilise an allocated slot without giving advance notice of cancellation where this causes prejudice to airport or air traffic operations.

CONSULTATION ON THE MISUSE OF SLOTS ENFORCEMENT CODE

In this context causing prejudice to airport operations means failure to give advanced notice of a cancellation of a slot, which the air carrier knew it would not use, thus wasting scarce resources (slots) which could have been reallocated to other air carriers.

Air carriers will not be penalised for normal, day to day operational variations affected by factors beyond their control which result in them failing to utilise the slots that have been allocated to them.

Air carriers would however be liable for sanctions where the failure to operate was not due to an on-the-day operational disruption and the air carrier knew in advance that it would not utilise the allocated slot but failed to give notice to ACL to cancel the slot.

ACL proposes that Section 4.1 of the Code should be amended to include a fifth type of slot misuse and a new bullet added at the end to read –

- x The failure to cancel an allocated slot, and the failure to use it, where such non-use is not the result of on-the-day operational disruption, thereby causing prejudice to airport or air traffic operations.

Question 5

Do you agree that the list of examples of types of misuse covered by the Code should be extended to include one additional type of misuse - the failure to cancel an allocated slot and intentionally not use it as proposed above?

5.6 Repeated Misuse of Ad hoc Slots

Section 5.1 of the Code defines 'repeatedly' as: 'This is taken to mean more than once in the past 12 months on a particular scheduled service operated by that air carrier, and, in the case of ad hoc flights, more than once for a particular type of service (e.g. positioning flights between Manchester and Gatwick).'

The example cited in this section could be seen to fetter the discretion of the Coordinator in applying sanctions due to the ambiguity of what is, and what is not, a 'particular type of service'.

There have been many examples of what the Coordinator considers to be repeated misuse of ad hoc flights, for example where airlines repeatedly operate positioning flights without a slot allocated by the Coordinator, though not necessarily repeatedly between the same two airports. Airlines have then sought to argue that such "ad hoc" flights cannot be considered as 'a particular type of service' because the services are not exactly the same – in this case the flights are between different airports.

Therefore the concept of repeated, with respect to "ad hoc" flights, in Section 4.1 and 5.1 of the Code is too narrowly stated; it should be clarified to make it clear that any multiple misuse of ad hoc of slots i.e. more than one, at a particular coordinated airport may be liable to sanction under the Code.

ACL proposes that the wording of Section 5.1 of the Code should be amended to read – ‘This is taken to mean more than once in the past 12 months on a particular scheduled service operated by that air carrier to or from the airport in question or more than one ad hoc service in the past 12 months operated by that air carrier to or from the airport in question. ~~—and, in the case of ad hoc flights, more than once for a particular type of service (e.g. positioning flights between Manchester and Gatwick).’~~

Question 6

Do you agree that the definition of Repeatedly in section 5.1 of the Code should be changed to deal with repeated misuse of slots for ad hoc flights, with the text proposed above?

5.7 "Intentional" Misuse of Slots

Section 5.2 of the Code defines ‘intentional’ as ‘It is sufficient to show from the circumstances that the carrier intended to land or take-off an aircraft at or about the time that it did land or take-off, if this is different from the allocated slot time – e.g. most obviously, published flight times on the internet. In the case of a "no show" or a failure to use a slot the mere non-arrival of the flight can be sufficient to demonstrate intent not to use an allocated slot.’

There have been many examples of what the Coordinator considers to be intentional misuse of slots by ad hoc flights, for example where airlines repeatedly operate positioning flights without a slot allocated by the Coordinator but, as the details of the service are not ‘published’, air carriers have argued that it cannot be considered as intentional.

A further argument used by air carriers is that there was no intent, as human error/oversight resulted in the flight operating without first requesting a slot from the Coordinator. Some airlines have used human oversight as a defence to argue that they have not breached the Code and therefore that they are not liable to be sanctioned.

Human error, or oversight by an air carrier or its staff, cannot be regarded as a legitimate justification for the misuse of slots. It is incumbent upon each air carrier to ensure that the staff and processes responsible for dealing with slots are fully in compliance with the Code.

Operating at a time other than the allocated slot time is also misuse, even if the slot time actually used could have been allocated to the air carrier to cover the landing or take-off but they did not apply for it.

ACL proposes that the wording of section 5.2 of the Code should be amended to read – 'To show intent it is sufficient to show from the circumstances that the carrier intended to land or take-off an aircraft at a coordinated airport at or about the time that it did land or take-off, if this is different from the allocated slot time—e.g. most obviously, published flight times on the internet. Human error or oversight by the carrier cannot be used to show lack of 'intent'.

Each air carrier must have sufficient resources and appropriate processes in place to ensure that slots are not misused. In the case of a "no show" or a failure to use a slot the mere non-arrival or non-departure of the flight can be sufficient to demonstrate intent not to use an allocated slot.

Question 7

Do you agree that the definition of "Intentionally" in section 5.2 of the Code should be changed to the text proposed above?

5.8 What is meant by "Significantly"

Under the Code "significantly" is defined as 'Any difference between the intended (planned) landing or take-off time and the allocated slot time which breaches the coordination parameters'.

It goes on to qualify this by saying 'i.e. intentionally operating at a time when no slots are available for allocation'. This qualification is too limiting as it could preclude action being taken against misuses such as operations without an allocated slot or air carriers intentionally operating some hours away from their allocated slots when, retrospectively, a slot may have been available. The slot may not have been available in advance, however, and the failure to secure a suitable slot is likely to have affected other air carriers.

Therefore ACL proposes that the wording of section 5.5 of the Code should be amended to read: 'Significantly – Any difference between the intended (planned) landing or take off time and the allocated slot time which breaches the coordination parameters for the airport (~~i.e. intentionally operating at a time when no slots are available for allocation~~) will be regarded as a significantly different time for the purposes of UK Regulation 14 as it is likely to affect other air carriers.'

Question 8

Do you agree that the definition of "Significantly" in section 5.5 of the Code should be changed to the text proposed above?

5.9 General and Business Aviation

For General/Business Aviation (private flights, business jets, etc) it is not practical for every individual operator to make its own slot requests directly with the Coordinator, so the requests are often made by their handling agents.

In a number of cases the handling agent has not given the air carrier the correct information about the slots allocated to them by the Coordinator (e.g. it has told them that they have a slot cleared when they do not, told them the wrong time, etc.). The air carrier has then acted in good faith on that information and misused its slots.

As the UK Regulations stand, the Coordinator cannot impose a penalty on a handling agent.

Whilst it may seem harsh, ACL proposes that General/Business Aviation (GA/BA) operators should be fined in these circumstances because the handling agents are in fact operating under contract in an agency capacity or on behalf of the air carrier in question.

Applying ordinary principles of agency law, the incompetence or negligence of the handling agents should not be an excuse for the misuse of slots by GA/BA operators. If a GA/BA operator employs an agent to clear slots on its behalf, then the GA/BA operator is liable for the acts or omissions of their handling agent. It is not the responsibility of the Coordinator to 'police' the agents of GA/BA operators.

The Coordinator is entitled to apply a financial penalty to the GA/BA operator directly, ignoring the agent; leaving the GA/BA operator to seek an indemnity from their agent if appropriate.

The Coordinator therefore proposes to clarify section 5.3 of the Code as follows:

'5.3 Beyond his reasonable control – this would include exceptional weather conditions or industrial action, air traffic control delays or other factors preventing safe operation of the flight where these are not within the reasonable control of the airline. For the avoidance of doubt an air carrier's reliance on incorrect information (about slots allocated by the

Coordinator) which is given by an agent of the air carrier is not something beyond its reasonable control .’

Question 9

Do you agree that it is necessary to clarify the Code to make it clear that the financial penalties must be applied to air carriers and that GA/BA operators must ensure that the handling agents appointed to clear slots on their behalf at coordinated airports must be accurate when advising the GA/BA operator of the slots that have been cleared on its behalf?

5.10 Application of Financial Penalties

Section 7 of the Code deals with the ‘Process for the Imposition of Financial Penalties’.

Section 7.2 of the Code highlights the importance of the Coordinator and the air carriers working together to see if a scheduling solution can be found where the airline has little scheduling flexibility and is unable to operate at the slot times allocated by the Coordinator.

During the first year of operation of the Code one airline claimed that as a solution was eventually found to resolve the discrepancy between the time at which it operated and the allocated slot time it could not be penalised under the Code for the periods when it operated at a different time from the allocated slot.

Clearly during a period in which the Coordinator and the air carrier seek a solution, the air carrier may still be operating at a different time from the allocated slots. This is still likely to have a significant impact on the level of delays for all other air carriers, the majority of which are trying to operate to their allocated slots.

In the view of the Coordinator it is therefore reasonable to apply a financial penalty for the period of misuse. This will also give air carriers greater incentive to resolve these scheduling problems and find solutions quickly with the Coordinator.

In order to make this clearer the Coordinator proposes that Section 7.3 of the Code is modified to include this clarification as follows;

‘The Coordinator will issue a notice to advise the air carrier of its proposed decision both on breach and proposed sanctions and invite the carrier to make written comments (normally within at least 5 working days but less in urgent cases). (Regulation 17(2)(a)) . A notice may include a proposed sanction (and sanctions may then be imposed) for the period of misuse of slots even though subsequently a scheduling solution to the problem is found.

The air carrier on whom a penalty is proposed, or the person to whom a direction is proposed to be issued may ask to be heard orally (Regulation 17(3)). The Coordinator will also inform the managing body of the airport concerned, and the Slot Performance Committee.'

Question 10

Do you agree that in order to make it clearer that the Coordinator is able to apply a financial penalty for the misuse of slots during the whole of the period of misuse, Section 7.3 of the Code should be modified as proposed above?

5.11 Funding of the Enforcement Code

The 2007 Annual Report on the Enforcement Code makes it clear that the evidence of misuse of slots varies significantly from airport to airport. Figure 4 in the report shows the number of slot issues investigated by airport have been considerably higher at Stansted and Gatwick than at Heathrow and Manchester.

The same pattern appears in Figure 7 of the Report which shows the number of sanctions and warnings issued by airport. These patterns could of course change over time.

Section 16 of the Code states that 'The Coordinator will introduce, so far as practicable, a revenue neutral process of financing the cost of administering the sanction scheme such as to guarantee the Coordinator's financial independence.' The Coordinators financial and operational independence needs to satisfy Article 4(2) of the EC Regulation.'

The costs of administering and enforcing the Code outlined in section 16 of the Code are intended to be shared equitably between the coordinated airports, weighted in proportion to their annual charges from ACL. These charges are, inter alia, weighted according to the number of slots at each airport.

This formula to apportion charges results in, for example, Heathrow Airport paying the largest proportion of the costs of administering and enforcing the Code yet the level of misuse at Heathrow is the lowest of the airports. This situation could not be predicted when the Code was introduced and Heathrow Airport Limited in particular would like the system for the apportionment of the cost of administering the Code to be made more equitable.

The Coordinator therefore proposes that section 16 of the Code should be modified to be less prescriptive about the exact formula that should be applied to apportion the cost of the administration and enforcement of the Code, leaving

it up to the representatives of the airports to agree annually an equitable basis for apportioning these costs.

Only where the coordinated airports are unable to reach an agreement would the default arrangement then be that costs are apportioned according to the number of slots at each airport, using the formula applied by ACL to work out its own charges to each airport for the coming year.

A second issue with section 16 of the Code - on the Funding of Enforcement - is that one of the airline associations has charged ACL with benefiting financially from the application of the sanctions. ACL is paid its costs for administering the Code annually by the four coordinated airports. Revenue raised from fines paid by airlines goes exclusively to refund the four coordinated airports up to the cost of the administration of the Code charged to them by ACL. Any surplus fine income must be paid to the Treasury (UK Regulation 17.8(b)).

ACL proposes also to amend the Code to make it clearer that the Coordinator has no financial interest in the application of financial penalties whatsoever.

ACL therefore proposes the following changes to Section 10 of the Code to address the two issues outlined above as follows:

'16 FUNDING OF ENFORCEMENT

The Coordinator's costs of administering and enforcing Regulation 14 shall be shared equitably between those airports in the United Kingdom which are coordinated, ~~but~~ and will be repaid to the airports up to the amount of the cost of administering the scheme from any financial penalties which are collected.

The Coordinator will introduce, ~~so far as practicable, a revenue neutral~~ process of financing the cost of administering the sanction scheme which does not benefit the Coordinator financially but which ~~such as to~~ guarantees the Coordinator's financial independence.

The estimated operating cost of the scheme for each year will initially be paid in advance to the Coordinator by the managing bodies of the coordinated airports in ~~the same~~ proportions to be agreed each year. ~~as the annual coordination charges levied on them by the Coordinator i.e. the airports' contributions.~~

If the airports fail to agree on an equitable share of the cost of administering and enforcing the Code by 30 October each year for the following ACL Financial Year (1 April to 31 March) then their share of the costs will be in proportion to the number of slots used by ACL to calculate their share of their contribution to ACL's other costs for the year.

CONSULTATION ON THE MISUSE OF SLOTS ENFORCEMENT CODE

For each year if the actual expenditure is less than the estimated cost the surplus contributions gathered by the Coordinator will be returned after the Coordinator's year end to the managing bodies of the coordinated airports in the same proportion as their contributions towards the cost of operating the sanction scheme.

For each year if the actual expenditure is more than the estimated cost the Coordinator will recover the additional costs from the managing bodies of the coordinated airports in the following financial year.

Any sanction income will initially be used to refund contributions towards the cost of administering the scheme by the managing bodies of the airports in proportion to their initial contributions.

Any surplus sanction or fine income will be submitted to HMT Treasury at the end of the Coordinator's financial year and paid into the Consolidated Fund. (Regulation 17(8)).

The Coordinator will operate an open set of 'sanction scheme' accounts transparent to the airport managing bodies and to the DfT. These accounts will be submitted annually to the DfT and HMT.'

Question 11

Do you agree that the basis of funding of the application and enforcement of the Code should be modified to make it more equitable between the airports?

Question 12

Do you agree that the basis of funding of the application and enforcement of the Code should be clarified to make it clear that the Coordinator (ACL) has no financial interest or benefit from the application of financial penalties to air carriers?

5.12 Review Procedure

The review procedure in section 14.5 (d) allows for a 14 day notice period from the Independent Reviewer to the air carrier about the time and place of the review meeting.

It has been proposed that this should be shorter if all parties (the air carrier, the Coordinator and the Independent Reviewer) agree to a shorter time.

ACL therefore proposes that the last sentence of 14.5 (d) is amended as follows:

'The Independent Reviewer will give not less than 14 days notice (or such shorter timeframe as may be agreed by all the parties) of the time and place of any such hearing, which will be held as soon as is practicable. ~~within 7 days thereafter~~ The person seeking the review will identify, at least 7 days before the hearing, who will attend the hearing on its behalf.'

Question 13

Do you agree that in order to make it clearer that a shorter notice period for hearings is acceptable if all parties agree then Section 14.5 of the code should be modified as proposed above?

5.13 Further Types of Misuse

At the time of the original consultation in 2006 ACL indicated that there were other concerns regarding the use of slots at coordinated airports in the UK.

Section 4.2 of the Code made it clear that there may be other forms of misuse which are covered by the UK Regulations, and which become identified over time, may also need to be covered by the Code.

The Coordinator is not proposing to clarify the Code further as part of this consultation but wishes to highlight that the late return of slots, after the slot return deadline and, worse still, after the start of the scheduling season, remains an endemic problem in the industry and shows little sign of diminishing.

Recently the industry has, through the IATA Worldwide Scheduling Guidelines, introduced new procedures to identify, by airline, how many slots are handed back late in the scheduling process.

ACL will keep this data under review and include details of each air carrier's performance against these criteria in its Annual Report on the sanctions scheme.

Question 14

Are there any amendments to the Code which are compatible with the UK Regulations and which could address the problem of the late return of slots?

5.14 Costs of Hearings by the Independent Reviewer

Section 14.8 of the Code is a straight extract from 19.5 of the UK Regulation which deals with the apportionment of costs incurred by the person requesting the review and the Coordinator's or schedules facilitator's costs.

As the Code is currently drafted decisions regarding the apportionment of costs must be made by the Independent Reviewer based on the results of the review.

The apportionment of costs is a complex area which will incur additional costs by the Independent Reviewer. In practice it Independent Reviewer is not obliged to make a cost order against either the air carrier or the Coordinator if they do not ask for costs to be apportioned, he can leave it to each party to bear their own costs.

It is therefore proposed that a new paragraph is added at the end of section 14.8 of the Code to say:

Normally the independent reviewer can be expected to determine that each party bears its own costs (ie they lie where they fall) unless one of the parties, the air carrier or the Coordinator/schedules facilitator, requests the independent reviewer to make such a determination.

Question 15

Do you agree that in order to avoid additional costs for the person requesting a review and the Coordinator/schedules facilitator that costs should only be apportioned by the Independent Reviewer if this is requested by one of the parties?

5.15 Conformity between airport and ATC slots

The European Commission mandated Eurocontrol to prepare a draft Air Traffic Control (ATC) Regulation which, inter alia, would improve the conformity between airport and ATC slots. Eurocontrol has now presented its proposals to the Commission which is carefully considering the draft legislation.

One of the measures being considered by the Commission is the imposition of sanctions for air carriers that file a flight plan for a service at a coordinated airport without a slot allocated by the Coordinator.

A further measure which is being considered is the possibility of action being taken against the air carrier where there is a repeated discrepancy between the flight plan and the slot allocated by the Coordinator.

If the Commission adopts these proposes, depending upon the penalties to be applied, it may be appropriate to include these additional controls in the Code and, if necessary, seek an amendment to the UK Regulations.

Question 16

Do you have any further comments, ideas or suggestions to make regarding improvements to the Code?

6 OTHER IDEAS FOR IMPROVEMENTS TO THE ENFORCEMENT CODE

ACL would welcome any suggestions for improvements to the Enforcement Code, which meet the objectives of the Code and the UK Regulations.

Please submit your suggestions and give reasons and evidence to support your views where you can. More weight will be attached to reasoned arguments.

7 CONSULTATION PERIOD

The deadline for responses to this consultation is 1 August 2008.

If you wish to register your views before the deadline you may:

- x Write to ACL at the following address

Consultation
Airport Coordination Limited
Capital Place
120 Bath Road
Hayes,
Middx
UB3 5AN
United Kingdom

- x Download the Response Form from the ACL web site (www.acl-uk.org/consultation) in MS Word format and submit it to ACL by email to consultation@acl-uk.org or by mail at the address above.
- x Visit our web site www.aclconsultation.co.uk and to complete your response online and send it to ACL

Taking into account all the comments received as part of this consultation ACL will publish an updated version of the Code during Summer 2008.

8 FURTHER INFORMATION

You can contact ACL for more detailed information on any of the issues in this consultation document by email at consultation@acl-uk.org or by telephone +44 (0) 208 564 0606

Response Form

Name.....

Company or Organisation

Email Address

Question 1

Do you agree that it is no longer necessary to retain the extensive preamble in Section 1 of the Code?

Response

Question 2

Do you think that the Code, with the revision now proposed, is clear that operating without a slot allocated by the Coordinator at a coordinated airport is a sanctionable form of slot misuse?

Response

Question 3

Do you agree that the sentence: 'Sanctions will ordinarily only be applied when the normal coordination process and dialogue between the Coordinator and the air carrier has failed to resolve the air carrier's scheduling problems.' should be deleted from Section 2.4 of the Code?

Response

Question 4

Do you agree to this clarification of section 4.1 as to how misuse must be repeated and intentional before an air carrier can be liable for a slot sanction?

Response

Question 5

Do you agree that the list of examples of types of misuse covered by the Code should be extended to include one additional type of misuse - the failure to cancel an allocated slot and intentionally not use it as proposed in the consultation?

Response

Question 6

Do you agree that the definition of Repeatedly in section 5.1 of the Code should be changed to deal with repeated misuse of slots for ad hoc flights, with the text proposed in the consultation?

Response

Question 7

Do you agree that the definition of "Intentionally" in section 5.2 of the Code should be changed to the text proposed in the consultation?

Response

Question 8

Do you agree that the definition of "Significantly" in section 5.5 of the Code should be changed to the text proposed in the consultation?

Response

Question 9

Do you agree that it is necessary to clarify the Code to make it clear that the financial penalties must be applied to air carriers and that GA/BA operators must ensure that the handling agents appointed to clear slots on their behalf at coordinated airports must be accurate when advising the GA/BA operator of the slots that have been cleared on its behalf?

Response

Question 10

Do you agree that in order to make it clearer that the Coordinator is able to apply a financial penalty for the misuse of slots during the whole of the period of misuse, Section 7.3 of the Code should be modified as proposed in the consultation?

Response

Question 11

Do you agree that the basis of funding of the application and enforcement of the Code should be modified to make it more equitable between the airports?

Question 12

Do you agree that the basis of funding of the application and enforcement of the Code should be clarified to make it clear that the Coordinator (ACL) has no financial interest or benefit from the application of financial penalties to air carriers?

Response

Question 13

Do you agree that in order to make it clearer that a shorter notice period for hearings is acceptable if all parties agree then Section 14.5 of the code should be modified as proposed in the consultation?

Response

Question 14

Are there any amendments to the Code which are compatible with the UK Regulations and which could address the problem of the late return of slots?

Response

Question 15

Do you agree that in order to avoid additional costs for the person requesting a review and the Coordinator/schedules facilitator that costs should only be apportioned by the Independent Reviewer if this is requested by one of the parties?

Response

Question 16

Do you have any further comments, ideas or suggestions to make regarding improvements to the Code?

CONTROLLING THE MISUSE OF SLOTS AT COORDINATED AIRPORTS IN THE UK

MISUSE OF SLOTS ENFORCEMENT CODE 2007

made by the Coordinator under Regulation 18 of The Airports Slot Allocation Regulations 2006 (SI 2006 No 2665)

1 EU SLOTS REGULATION AND SLOT MISUSE

- 1.1 Article 14.5 of EEC Regulation 95/93, as now amended by Regulation 793/2004, (the **Council Regulation**) requires all Member States to ensure that effective, proportionate and dissuasive sanctions, or equivalent measures, are available to deal with serious misuse of allocated slots.
- 1.2 On 13 July 2005 the Department for Transport (**DfT**) issued a consultation document to stakeholders in the aviation industry on the best means to introduce sanction mechanisms to control the misuse of slots at coordinated airports in the United Kingdom.
- 1.3 On 13 April 2006 the DfT published draft 'Misuse of Slots Rules' and 'Procedures and Guidelines', produced jointly by the DfT and Airport Coordination Limited (**ACL** or the **Coordinator**, being the Coordinator for all coordinated airports in the United Kingdom) setting out the proposed basis of operation of the scheme. The DfT also published a draft Statutory Instrument to implement Council Regulation 793/2004 (which includes slots sanctions) into UK law.
- 1.4 On 27 April 2006 the DfT and ACL held a seminar with industry representatives to discuss and clarify the draft papers circulated on 13 April 2006 and invited written comments on the draft proposals by 18 May 2006 so that the views of the industry could be taken into account.
- 1.5 Following consultation with stakeholders in the aviation industry, the Secretary of State for Transport adopted the Airports Slot Allocation Regulations 2006 (the **UK Regulations**), which took effect from 1st January 2007. UK Regulation 14 prohibits the repeated and intentional misuse of allocated slots by air carriers. UK Regulation 18(1) requires the Coordinator to adopt an enforcement code to make provision for the manner in which the Coordinator will enforce UK Regulations 7, 15 and 16.
- 1.6 This enforcement code (the **Code**) was adopted by the Coordinator to take effect on the same date that the UK Regulations came into effect.

2 OBJECTIVES

- 2.1 UK Regulation 14 says:

"An air carrier operating at a coordinated airport shall not repeatedly and intentionally:

- (a) **operate air services at times significantly different from the allocated slots; or**
- (b) **use slots in a significantly different way from that indicated at the time of allocation, where such use causes prejudice to airport or air traffic operations.**

- 2.2 The objective of UK Regulation 14 and this Code is to give effect to Article 14.5 of the Council Regulation. They aim to prevent the repeated and intentional misuse of slots at the

coordinated airports in the United Kingdom – currently Heathrow, Gatwick, Manchester and Stansted - and such other airports as may be designated from time to time as coordinated pursuant to Article 3 of the Council Regulation.

- 2.3 The operation of a single additional flight on a single day can have a significant impact on the level of delays for all other air carriers, the majority of which are trying to operate to their allocated slots. The purpose of UK Regulation 14 and this Code is to ensure that, in a proportionate and fair way, all slots are used at the allocated slot time and in the manner indicated when the slots were allocated. The efficient working of a coordinated airport and the integrity of the slot allocation system requires all operations, at any time of the day or night, to be planned to operate at the allocated slot time and operate in a way which meets all the terms of the slot allocation.
- 2.4 This Code is designed to ensure that the UK Regulations deal firmly with repeated and intentional slot misuse and do not penalise normal, day to day, variations in scheduled landing and take-off times affected by factors beyond the control of air carriers. Sanctions will ordinarily only be applied when the normal coordination process and dialogue between the Coordinator and the air carrier has failed to resolve the air carrier's scheduling problems.

3 OTHER CONCURRENT ADMINISTRATIVE SANCTIONS

UK Regulation 14 and this Code are in addition to the Coordinator's administrative powers to enforce compliance with allocated slots, contained both in Article 14.4 of the Council Regulation and in Local Rules applicable to a particular coordinated airport.

- 3.1 Articles 14.4 and 14.5 of the Council Regulation provide two distinct sanctions for the types of slot misuse covered by both provisions. Article 14.4 provides that:

"Air carriers that repeatedly and intentionally operate air services at a time significantly different from the allocated slot as part of a series of slots or uses slots in a significantly different way from that indicated at the time of allocation and thereby cause prejudice to airport or air traffic operations shall lose their status as referred to in Article 8(2). [ie entitlement to claim the same series of slots in the next equivalent scheduling period]. The Coordinator may [also] decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned and after issuing a single warning. "

If the breach persists to the end of a series of slots and the air carrier continues to operate intentionally "off slot", after a single warning has been issued then, in accordance with Article 14.4 of the Council Regulation, the carrier will lose its entitlement to claim the equivalent slots in the next scheduling period.

Article 11.1 of the Council Regulation provides for appeals concerning the application of Article 14.4 to be made to the Coordination Committee.

- 3.2 The Coordinator can apply Article 14.4 relying on the Council Regulation directly. By contrast Article 14.5 is implemented by UK Regulations 14-19 and by this Code. Although they deal with the same types of misuse, they are separate sanctions. The Coordinator may wish to use both, either concurrently or sequentially (e.g. withdrawing slots where misuse continues, despite financial penalties having been imposed or directions having been made, or where urgent action is required).

- 3.3 In the United Kingdom the airport managing bodies, the air carriers and ACL, as Coordinator, have also jointly developed and implemented 'Local Rules' (administrative guidelines). These are made possible by Article 8.5 of the Council Regulation. Some Local Rules are designed to discourage slot misuse and contain, in some cases, sanctions, such as those at Gatwick giving lower priority to future applications for slots by carriers who have misused slots. These Local Rules will continue to exist alongside the proposed sanctions scheme, though they may in time, and following discussions with the Coordination Committee, evolve, or be subsumed into this Code.
- 3.4 Financial penalties and other sanctions applied by the Coordinator are also distinct from any steps which the managing body of the airport may take whether for breach of an airport's Terms and Conditions of Use or otherwise. For example, for some General/Business aviation operators, the managing body of the airport may exercise its powers under its Terms and Conditions of Use to prohibit an operator or particular services of an operator for a fixed period of time if they are believed to have failed to adhere repeatedly and intentionally to an allocated slot.

4 TYPES OF SLOT MISUSE COVERED

- 4.1 There are several types of misuse addressed by UK Regulation 14 and this Code. Four common types of misuse are:
- Intentional operation of a series of air services at times significantly different from the allocated slots.
 - Intentional operation of ad hoc air services at times significantly different from the allocated slots (such ad hoc slot misuse must be repeated before any sanctions are applied);
 - The use of slots in a significantly different way from that indicated at the time of allocation e.g. operating with a larger aircraft than the slot allocated at a terminal constrained airport, operating at night without an allocation of night movements/night quota, or operating with a noisier aircraft than approved by the Coordinator.
 - Operating without an allocated slot.
- 4.2 The list is not exhaustive and there may be other forms of slot misuse which are covered by UK Regulation 14 and this Code, or which become identified over time, and which may also need to be addressed by this Code in the future.

5 DEFINITIONS

Words defined in the Council Regulation and in the UK Regulations shall have the same meaning in this Code. Particular expressions in the Council Regulation and in the UK Regulations call for comment:

- 5.1 **Repeatedly** - This is taken to mean more than once in the past 12 months on a particular scheduled service operated by that air carrier, and, in the case of ad hoc flights, more than once for a particular type of service (e.g. positioning flights between Manchester and Gatwick).
- 5.2 **Intentionally** - It is sufficient to show from the circumstances that the carrier intended to land or take-off an aircraft at or about the time that it did land or take-off, if this is different from the allocated slot time – e.g. most obviously, published flight times on the internet. In the case of

a "no show" or a failure to use a slot the mere non-arrival of the flight can be sufficient to demonstrate intent not to use an allocated slot.

5.3 **Beyond his reasonable control** – this would include exceptional weather conditions or industrial action, air traffic control delays or other factors preventing safe operation of the flight where these are not within the reasonable control of the airline.

5.4 **Use of Slots** - The 'use of slots' includes both the failure to use slots allocated by the Coordinator at all, and landing or take-off without a slot having been allocated at all.

Note: The Council Regulation states in Article 2 (g) that there are a few limited cases of 'ad hoc' operations which are exempt from the process of slot allocation i.e. State Flights, emergency landings, humanitarian flights. At Gatwick, for example, Local Rule 3 has been developed which outlines the Coordinator's interpretation of the scope of the exemptions under the Council Regulation. This Gatwick Local Rule also includes procedures to allow limited flexibility for time critical flights e.g. service recovery flights, which may need to operate when no slot is available in order to avoid hardship to passengers and animals.

5.5 **Significantly** - Any difference between the intended (planned) landing or take-off time and the allocated slot time which breaches the coordination parameters (i.e. intentionally operating at a time when no slots are available for allocation) will be regarded as a significantly different time for the purpose of UK Regulation 14 as it is likely to affect other air carriers.

5.6 **Coordination Parameters** are those parameters set for the Coordinator under Article 6 of the Council Regulation. They are available from the Coordinator, the airport managing body or the Airline Operators Committee.

5.7 **Prejudice to Airport or Air Traffic Operations** – Any use of a slot in a significantly different way from that indicated at the time of allocation may cause prejudice to airport or air traffic operations, for example when:-

- (a) an air service breaches significantly any technical, operational and environmental constraints and/or breaches the established coordination parameters e.g. operating with a larger aircraft for which no appropriate stands are available
- (b) an air service causes or increases the congestion and delays affecting other air carriers or passengers (e.g. increased delays at departures, security searches).

5.8 **Landing and take-off** - For the purpose of this Code landing and take-off shall mean the times at which the aircraft arrives at and leaves the terminal.

5.9 **Slot** - (As defined in the Council Regulation) means the permission given by a Coordinator in accordance with the Council Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing and take-off as allocated by the Coordinator in accordance with the Council Regulation.

5.10 **Slot Performance Committee.** The committee, composed of representatives of the airlines, the managing body of an airport, the air traffic services provider and the Coordinator, responsible for reviewing slot performance and dealing with cases of slot misuse referred to it by the Coordinator.

6 SANCTIONS FOR SLOT MISUSE: FINANCIAL PENALTIES

6.1 UK Regulation 16(1) provides that:

"Subject to regulations 17, 18 and 19 a penalty of up to £20,000 may be imposed by a coordinator by written notice served on any air carrier on each occasion on which that air carrier fails to comply with either of the duties set out in

- Regulation 14 [lands or takes-off in breach of Regulation 14 (set out in full in para 2.1 above)], or

- Regulation 15(4) [fails to comply with a direction issued under Regulation 15 (set out in full in para 8 below)]."

6.2 Penalties will vary depending on the nature of the breach, the aim being to set a penalty which is effective, dissuasive and proportionate to the type of misuse committed. The Coordinator will aim to take into account all the relevant circumstances in each case such as:

- whether the misuse is blatant
- the extent to which the coordination parameters were broken
- the extent to which airport or air traffic operations and/or other air carriers or passengers were or were likely to have been prejudiced by the misuse taking into account all technical, operational and environmental constraints e.g. use of a noisier aircraft or operating without a night quota
- previous and current slot performance; other behaviour and misuse by the same air carrier will be taken into account, i.e. whether this is this a first case of misuse or a "second offence"
- whether sanctions have been imposed on the air carrier for previous breaches
- the carrier's conduct following the misuse, including action taken to correct the misuse and degree of cooperation of the carrier during the investigation
- the possible benefits to the carrier from the misuse
- the size of aircraft used and the number of passengers generally carried on it
- whether the air carrier demonstrates the same behaviour at other UK coordinated airports
- at which UK coordinated airport the misuse was committed. Whilst the Coordinator will seek to apply consistent judgments as to what is a misuse across the coordinated airports in the UK, the impact of the misuse and the level of dissuasive sanctions may vary from airport to airport.

6.3 Where a financial penalty is applied then the starting point will be that each failure by an air carrier to comply with Regulation 14 will have a value of at least **£1,000**. Multiple infringements could trigger several financial penalties.

6.4 Some examples of slot misuse and possible penalties are in the Annex to this Code.

- 6.5 It is a defence if the air carrier demonstrates that the breach of Regulation 14 was beyond its reasonable control. **(Regulation 16(4)).**

7 PROCESS FOR IMPOSITION OF FINANCIAL PENALTIES

7.1 Stage 1: Investigation

The Coordinator may act on a complaint or on its own volition.

The Coordinator may use its own data and/or analyse alternative data sources (e.g. an airline's website or CFMU data) to help identify whether a slot may have been intentionally misused.

The Coordinator may consult such persons (including the Slot Performance Committee) as it thinks appropriate and ask for information from any person that the Coordinator thinks may have relevant information.

When a potential case of misuse is identified, through slot monitoring or otherwise, then the air carrier will be contacted in writing (normally by email) with details of the alleged misuse and a request for information about the air service or slot use in question.

When making enquiries the Coordinator will state its rationale for believing that some form of slot misuse may have been committed, will provide the air carrier with the data which supports this view, will specify what information it requires from the air carrier (if any), and set a realistic timescale (normally at least 5 working days, less in urgent cases) for the air carrier to provide a formal written response.

If requested, the Coordinator will facilitate any request from the air carrier to hear it orally at a meeting.

If the air carrier supplies information which is false or misleading in any material particular, or fails to respond to the Coordinator, then the Coordinator will rely on the best information it has available (see also para 11 below, on failure to provide information).

7.2 Stage 2: Decision as to the breach of Regulation 14

The Coordinator will assess whether it thinks there has been a breach of Regulation 14.

If an adequate explanation is provided by the air carrier which satisfies the Coordinator then no action will be taken and the air carrier will be advised accordingly. The air service(s) will remain subject to the normal monitoring by the Coordinator.

Alternatively, the Coordinator will work with the air carrier to see if a scheduling solution can be found to end the problem and to prevent further misuse.

If no response to the Coordinators enquiry is forthcoming, or if the response is inadequate or inappropriate then, the investigation may, depending on the seriousness of the breach of Regulation 14, move up to Stage 3.

7.3 Stage 3 : Decision as to sanctions

The Coordinator will consider an appropriate sanction, taking into account the guidelines and criteria set out under paragraph 6 above.

The Coordinator will issue a notice to advise the air carrier of its proposed decision both on breach and proposed sanctions and invite the carrier to make written comments (normally within at least 5 working days, but less in urgent cases). **(Regulation 17(2)(a))**. The air carrier on whom a penalty is proposed, or the person to whom a direction is proposed to be issued may ask to be heard orally **(Regulation 17(3))**. The coordinator will also inform the managing body of the airport concerned, and the Slot Performance Committee.

The Coordinator will consider any such comments or carry out any further investigation it considers necessary. The Coordinator will then take its decision, and send it to the air carrier. The Coordinator will give reasons which explain why any penalty has been imposed and the amount of the penalty. **(Regulation 17(1))**. The air carrier will be given a reasonable time, normally 14 days, in which to take the action required by the Coordinator, including payment of any financial penalties.

The Independent Review Procedure, whereby an air carrier may seek a review of the Coordinator's decision, is set out at paragraph 14 of this Code.

As an alternative to, or in addition to, imposing financial penalties the Coordinator may decide to take administrative steps, either as set out at para 3 above, or by issuing directions as at paragraph 8 below.

7.4 Urgent cases

Where an apparent breach of Regulation 14 needs to be dealt with urgently, and/or the air carrier appears to be in breach of a previous decision by the Coordinator, the Coordinator may impose much shorter time limits than those suggested above.

8 DIRECTIONS

8.1 Regulations 15(1) and (2) provide that:

- (1) "A coordinator may issue a direction to any of the persons specified in paragraph (2), for the purpose of securing compliance by an air carrier with the duty set out in paragraph 14, subject to the conditions specified in paragraph (3).
- (2) The persons referred to in paragraph (1) are:-
 - (a) that air carrier;
 - (b) the managing body of an airport; and
 - (c) an air traffic services provider.
- (3) The conditions referred to in paragraph (1) are that –
 - (a) in the case of a direction served upon the managing body of an airport or an air traffic services provider, the coordinator has first consulted that person; and
 - (b) the direction does not relate to an air traffic service required by –
 - (i) an arriving aircraft; or

(ii) a departing aircraft which has commenced push back from its stand."

8.2 In order to secure ongoing compliance with UK Regulation 14 the Coordinator has the power to issue directions in writing under UK Regulation 15(1) to an air carrier, the managing body of the airport and the air traffic services provider to secure that an air carrier brings to an end a breach of Regulation 14 or refrains from any likely repeated breach of Regulation 14.

8.3 The purpose of issuing a direction will generally be to require something specific, such as:

- an air carrier to alter the advertised times of its flights on its website, if inconsistent with the allocated slots;
- an air carrier to plan to land or take-off at the allocated slot time and not at any other time.
- an airport managing body or the air traffic services provider to refuse the air carrier the use of certain airport facilities.

8.4 The effect of breach of a direction by an air carrier is that:

- (a) A penalty of up to £20,000 may be imposed – see para 6.1 above.
- (b) air carriers and third parties who suffer loss or are otherwise affected by the breach may (depending on how the Coordinator frames the direction) be entitled to claim damages against the carrier for losses caused by such breach. **(Regulation 16(3))**.

8.5 It is a defence if the air carrier demonstrates that the breach of the direction was beyond its reasonable control. **(Regulation 16(4))**

9 PROCESS FOR ISSUING DIRECTIONS

9.1 Since Directions will normally be issued where there is likely already to have been a dialogue between the air carrier and the Coordinator, the Coordinator may not need to follow the complete procedure for the implementation of financial sanctions set out at para 7 above and/or may treat the matter as urgent (see para 7.4 above).

9.2 The air carrier, the managing body of the airport and the Slot Performance Committee will normally be informed of a proposed decision to issue a direction, except in urgent cases.

9.3 Every person to whom a direction is issued will be given an opportunity by the Coordinator to make representations, either before or after the direction is given. **(Regulation 17(2)(a))**.

9.4 The Coordinator will give reasons as to why any direction has been issued. **(Regulation 17(1)(c))**

9.5 A direction must meet certain requirements. In particular:-

- (a) in the case of a direction to be issued to a managing body or air traffic services provider the Coordinator must first consult with them **(Regulation 15(3)(a))**;
- (b) the direction must comply with any applicable airport by laws or air traffic services licence, exemption, approval or designation **(Regulation 15(4)(a))**

- (c) the direction must not relate to an air traffic service required by an arriving aircraft, or a departing aircraft which has commenced push back from its stand (**Regulation 15(3)(b)**);
- (d) the direction should not prejudice safety (**Regulation 15(4)(b)**);
- (e) a direction must not give rise to any material cost or liability to the managing body of an airport or an air traffic services provider (**Regulation 15(4)(c)**).

(Note: A person to whom a direction is given is entitled to assume that the Coordinator's direction has been issued lawfully). (**Regulation 15(5)**).

- 9.6 Any person to whom a direction is issued may require a review of the decision by the Independent Reviewer (see para 14 below). (**Regulation 17(2)**).

10 LIAISON WITH THE SLOT PERFORMANCE COMMITTEES

- 10.1 If the Coordinator proposes to impose a financial penalty on, or issue a direction to, an air carrier, it will inform the Slot Performance Committee, and the managing body of the airport, of the proposed decision to impose a sanction. In more complex cases the Coordinator may wish to seek detailed input from, and the views of, the Slot Performance Committee before making a decision to apply a sanction.
- 10.2 The Committee will be able to comment on the final decision if it wishes. However, in view of the need to act promptly to prevent the misuse of slots it will not be possible for cases to be considered by the Slot Performance Committee in advance of the sanction being applied, as it meets infrequently. The Coordinator will not, in any case, be obliged to wait for the views of the Slot Performance Committee before taking its decision.
- 10.3 The Slot Performance Committees will continue to play an important role as they can be influential in addressing more general issues of slot misuse, particularly with carriers which have a generally poor level of performance. The Slot Performance Committees is also the forum where the managing body of the airport can seek to discourage the misuse of the slot allocation system in parallel with this scheme. The two systems are separate, but work side by side.
- 10.4 When the Slot Performance Committee meets, the Coordinator will provide a comprehensive report to the Committee and the managing body at each airport on all the sanctions that it has applied or is in the process of applying. The Slot Performance Committee will review this data and determine if any further action is necessary.

11 FAILURE TO PROVIDE INFORMATION

- 11.1 The Council Regulation states in Article 7.1:

"Air carriers operating or intending to operate at a schedules facilitated or coordinated airport shall submit to the schedules facilitator or coordinator respectively all relevant information requested by them. All relevant information shall be provided in the format and within the time-limit specified by the schedules facilitator or coordinator....."

In Article 7.2 the principle of a penalty (lower priority for future slot requests) is outlined where an airline fails to provide the information referred to in Article 7.1 (unless it can satisfactorily demonstrate that mitigating circumstances exist) or provides information which is false or misleading (for example in relation to slot requests).

11.2 UK Regulation 7 says:

"Subject to Regulations 17, 18 and 19, a penalty of up to £20,000 may be imposed by a coordinator or schedules facilitator by written notice served on any air carrier or managing body of an airport with no designation status on each occasion on which that person:

- (a) fails to comply with a request for information made by the coordinator or schedules facilitator under Article 7.1 of the Council Regulation without reasonable excuse, or**
- (b) knowingly or recklessly furnishes information which is false or misleading in a material particular [*in response to such a request for information*]."**

11.3 Every person on whom a penalty for failure to provide information may be imposed will be given an opportunity to make representations before or after the penalty is imposed. **(Regulation 17(2)(a))**

11.4 The Coordinator or Schedules Facilitator will give reasons explaining why a penalty has been imposed. **(Regulation 17(1)(a))**

11.5 The person on whom a penalty is imposed may require a review of the relevant decision by the Independent Reviewer. **(Regulation 17(2)(b))** (see para. 14 below).

12 RECONSIDERATION OF DECISIONS

After a decision to impose a penalty or issue a direction is made the Coordinator (or Schedules Facilitator) may at its discretion give an opportunity to the air carrier (or managing body or air traffic services provider as the case may be) to make representations, and shall reconsider its decision if such opportunity is given. It may vary or cancel the decision to such extent as it deems appropriate in the circumstances. **(Regulations 17(2)(a) and 17(6)(a))**

13 PUBLICITY

The Coordinator shall publish its decisions to impose such financial sanctions or issue directions in such manner as it considers appropriate, except to the extent that material which is genuinely commercially confidential is concerned. Decisions to impose financial sanctions will be published on the Coordinator's website. **(Regulation 17(7))**

14 REQUEST FOR REVIEW

14.1 If an air carrier, managing body or air traffic services provider is dissatisfied with a decision of the Coordinator to make a finding of misuse in breach of Regulation 14, to impose a penalty under Regulation 16(1) or under Regulation 7, or if any air carrier, managing body or air traffic services provider is dissatisfied with a decision to issue a direction under Regulation 15(1), the carrier, managing body or air traffic services provider may request a review of the Coordinator's decision by the Independent Reviewer of its decisions. **(Regulation 17(2)(b))**

14.2 Regulation 17(4) says:

"A review may be required on any of the following grounds:

- (a) the decision of the relevant coordinator or schedules facilitator was substantially flawed;**

- (b) the decision-making process adopted by the relevant coordinator or schedules facilitator was substantially unfair;**
- (c) new information has become available after the decision that could not reasonably have been made available to the coordinator or schedules facilitator before the decision and which, had it been made available, would have resulted in a substantially different decision; or**
- (d) the relevant penalty or direction is disproportionate."**

14.3 Any request for review must:

- (a) be in writing, addressed to the Independent Reviewer of the Coordinator's decisions at: Attention Independent Reviewer, c/o Airport Coordination Limited, Capital Place, 120 Bath Road, Hayes, Middx ,UB3 5AN, UK; with a copy of the request for review sent to the Coordinator. In the case of an airline the request must be signed by the IATA Head of Delegation for the airline. For General and Business Aviation operators the request for a review must be signed by a Director of the Company.
- (b) set out in full the grounds for the review, with any supporting evidence;
- (c) state whether an oral hearing is required, and, if so, whether or not the person requesting the review will be legally represented at the hearing;
- (d) be made within 14 days of notification of the Coordinator's final decision.

14.4 Application for a review will not stay the effect of a decision of the Coordinator. Payment of penalties and compliance with directions will only be suspended at the discretion of the Coordinator in exceptional circumstances during this process.

14.5 Procedure on independent review

- (a) The Independent Reviewer will first decide whether the request falls within the grounds for review.
- (b) If he decides that it does he will undertake, either alone or, if he asks for it, with assistance from ACL, or any other source of help or advice, such further investigation as he thinks appropriate.
- (c) A review will normally be conducted in writing.
- (d) If requested by the person seeking the review the Independent Reviewer shall provide for proceedings to be held orally, at a meeting, which (if requested by the person seeking the review) will be held in public but from which the press and public may be excluded to the extent that the protection of commercial confidentiality requires. The Coordinator is entitled to be present at such hearing. The Independent Reviewer will give not less than 14 days notice of the time and place of any such hearing [and within 7 days thereafter the person seeking the review will identify who will attend the hearing on its behalf].
- (e) The Independent Reviewer may set out such further procedures as he may deem appropriate including in relation to the conduct of any oral hearing.

14.6 The Independent Reviewer may endorse the relevant decision, or direct that:

- (a) the Coordinator or Schedules Facilitator reconsider the decision
- (b) the amount of any penalty be increased or reduced
- (c) the relevant decision be varied in any other respect
- (d) the relevant decision be cancelled

to the extent or in such manner as the independent reviewer may specify. **(Regulation 17(5))**
The Independent Reviewer will convey to the person seeking the review the substance of his finding to the Coordinator or Schedules Facilitator.

14.7 If directed to reconsider its decision, the Coordinator or Schedules Facilitator will then reconsider its decision and may vary or cancel the decision to such extent as it deems appropriate in the circumstances. The Coordinator or Schedules Facilitator will give reasons for its decision.

14.8 Regulation 19(5) says:

"The costs of any review (including any legal costs) incurred by the person who has required the review and by the coordinator or schedules facilitator (including the fees and expenses of the independent reviewer) shall be:

- (a) borne, as between the coordinator or schedules facilitator and the person who has required the review, in such manner as the independent reviewer may determine to be fair, having regard to all of the circumstances; and**
- (b) to the extent that the independent reviewer determines that such costs incurred by the coordinator or schedules facilitator shall be borne by the person who has required the review, reimbursed by that person to the coordinator or schedules facilitator; or**
- (c) to the extent that the independent reviewer determines that such costs incurred by the person who has required the review shall be borne by the coordinator or schedules facilitator, reimbursed by the coordinator or schedules facilitator to that person."**

15 EXERCISE OF POWERS

Where the Coordinator is a body corporate the Coordinator shall exercise its powers through an independent member of its Board and such of its employees as are responsible for slot allocation, each of whom shall have no personal interest in the imposition or otherwise of any penalty or the making of any direction.

16 FUNDING OF ENFORCEMENT

The Coordinator's costs of administering and enforcing Regulation 14 shall be shared equitably between those airports in the United Kingdom which are coordinated, but will be repaid up to the amount of the cost of administering the scheme from any financial penalties which are collected.

The Coordinator will introduce, so far as practicable, a revenue neutral process of financing the cost of administering the sanction scheme such as to guarantee the Coordinator's financial independence.

The estimated operating cost of the scheme for each year will initially be paid in advance to the Coordinator by the managing bodies of the coordinated airports in the same proportion as the annual coordination charges levied on them by the Coordinator i.e. the airports' contributions.

For each year if the actual expenditure is less than the estimated cost the surplus contributions gathered by the Coordinator will be returned after the Coordinator's year end to the managing bodies of the coordinated airports in the same proportion as their contributions towards the cost of operating the sanction scheme.

For each year if the actual expenditure is more than the estimated cost the Coordinator will recover the additional costs from the managing bodies of the coordinated airports in the following financial year.

Any Sanction income will initially be used to refund contributions towards the cost of administering the scheme by the managing bodies of the airports in proportion to their initial contributions.

Any surplus sanction or fine income will be submitted to HM Treasury at the end of the Coordinator's financial year and paid into the Consolidated Fund. **(Regulations 17(8) and 17(9)).**

The Coordinator will operate an open set of 'sanction scheme' accounts transparent to the airport managing bodies and to the DfT. These accounts will be submitted annually to the DfT and HMT.

17 COMING INTO EFFECT AND AMENDMENT

This Code has effect from the date on which the UK Regulations come into force.

The Coordinator may amend or revoke this Code, subject to consultation with the Secretary of State and any further consultation required by UK Regulation 18(3).

The latest version of this Code will be published on the Coordinator's website

The Coordinator will publish an annual report on the operation of the UK Regulations to the Secretary of State, the managing bodies of the airports and the members of the Coordination Committee of each airport. The effectiveness, scope and application of this Code will be reviewed in April 2008 and every two years thereafter. The review will include any proposed changes to deal, if necessary, with other forms of slot misuse or to improve the administration of the UK Regulations. **(Regulation 17(10)).**

**Airport Coordination Limited
Capital Place, 120 Bath Road
Hayes, Middlesex**

11th October 2006

ANNEX

EXAMPLES OF SLOT MISUSE AND POSSIBLE PENALTIES

Repeated and intentional operation of a series of air services at times significantly different from the allocated slots(a) The Problem

A significant breach of the slot allocation system is where air carriers, for a variety of operational and commercial reasons, deliberately operate a series of slots at, or close to, their required time, rather than at the slot time allocated by the Coordinator.

A penalty will accrue for each operation of that series of slots.

(b) Example

For a series of air services operating once a week, which spans the entire summer scheduling period (31 weeks), a financial penalty of £31,000 (31 weeks x £1,000) could be applied for a 'first offence'. Depending upon the relevant circumstances and the criteria in 6.2 the penalty could be increased to a maximum of £620,000 (31 weeks x £20,000)

It is possible that an air service, operating at a different slot time than the slot allocated by the Coordinator, may operate more than once per week, perhaps even daily, and become liable for a financial penalty. A daily service intentionally not operating at the allocated slot for the whole scheduling period would have its slots withdrawn under Article 14.4 in addition to the imposition of a financial penalty.

If the air carrier commits further breaches of Regulation 14 then the value of each qualifying misuse will be increased for a second offence and each subsequent offence on an escalating scale for multiple offences.

In practice it is assumed that, in view of the potential financial exposure, air carriers will seek to rearrange their flights to operate at the allocated slot time, without waiting until the end of the scheduling season.

The Coordinator need not wait until the end of the scheduling season before deciding to impose a financial penalty.

Repeated and intentional operation of ad hoc air services at times significantly different from the allocated slots(a) The Problem

Another a significant breach of the slot allocation system, is where air carriers, for a variety of operational and commercial reasons, intentionally operate an *ad hoc* slot at, or close to, their required time, rather than at the slot time allocated by the Coordinator. The impact of such slot misuse can be significant.

(b) Example

After the second operation using an ad hoc slot at a different time from the time allocated by the Coordinator, each subsequent operation of that type of service during the scheduling period for that airport will be considered as a qualifying misuse and would give rise to a financial penalty for each operation which misuses its allocated slot.

The use of slots in a significantly different way from that indicated at the time of allocation(a) The Problem

In some cases, for a variety of operational and commercial reasons, some air carriers intentionally operate in a significantly different way from that indicated at the time the slot was allocated by the Coordinator. This can be a significant breach of the slot allocation system.

Two common types of such misuse are:

- (i) Operating a larger aircraft than permitted when the slot was allocated, thus breaching the terminal or stand (especially at Heathrow) constraints;
- (ii) Operating an aircraft in the Night Quota Period which is not authorised (no quota allocated or the air carrier's share of quota fully used up or using a noisier aircraft than authorised) and where the airport night quota limits are constrained.

(b) Examples

In case (i), and notwithstanding remedies available under Article 14.4 of the Council Regulation, a financial penalty will be applied for each operation which misuses its allocated slot.

In case (ii) a financial or an administrative penalty may be applied. As an administrative penalty the managing body of the airport may refuse permission for further operations in the Night Quota Period by the air carrier.

Operating without an allocated slot(a) The Problem

This breach of the slot allocation system occurs where air carriers, for a variety of operational and commercial reasons, intentionally operate at a coordinated airport without an allocated slot. Operational emergencies causing air carriers to operate without prior slot approval e.g. diversions, will not be penalised under this scheme.

Operating without a slot is clearly in breach of the Airports' Terms and Conditions of Use and a breach of the Council Regulation (Article 2(g) of which says that a coordinated airport is one where an air carrier must have a slot allocated by a Coordinator to land or take-off).

(b) Example

After the repeated operation without a slot allocated by the Coordinator, each subsequent operation will be considered as misuse and each operation will be subject to a financial penalty on an escalating scale for each further misuse.



MISUSE OF SLOTS ENFORCEMENT CODE

ANNUAL REPORT – 2007

1. Introduction

The EU Slot Regulations 2004⁽¹⁾ (Article 14.5) requires Member States to ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional slot misuse.

In July 2005 the UK Department for Transport (DfT) consulted with industry stakeholders on the best means of controlling the misuse of slots at the four coordinated airports in the UK⁽²⁾.

As a result of this consultation, the DfT concluded that a sanctions scheme, including financial sanctions, was necessary and that ACL as the coordinator of the UK's four coordinated airports should administer the scheme.

In April 2006 the DfT published draft 'Misuse of Slots Rules' and 'Procedures and Guidelines', produced jointly by the DfT and ACL, setting out the proposed basis of operation of the scheme. The DfT also published a draft Statutory Instrument to implement the EU Slot Regulations 2004 into UK law. The DfT and ACL held a seminar attended by industry stakeholders to discuss the proposed scheme and invite written submissions.

On 1 January 2007 the Airport Slot Allocation Regulations 2006 (SI 2006 No. 2665 – the 'UK Regulations') came into effect which mandated ACL (the coordinator) to adopt an enforcement code to make provision for the manner in which it would enforce the UK Regulations. ACL published the Misuse of Slots Enforcement Code 2007 (the 'Enforcement Code') taking into account the views expressed by the industry stakeholders in the consultation.

⁽¹⁾ Regulation (EC) No 793/2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports

⁽²⁾ The UK's coordinated airports are Heathrow, Gatwick, Stansted, and Manchester.

This report summarises ACL's activities in applying the Enforcement Code during 2007, the first year of the scheme. A copy of the Enforcement Code is included as an Appendix to this report.

2. Types of Misuse

The Enforcement Code identifies four common types of misuse that are addressed by the UK Regulations:

- Intentional operation of a series of air services at times significantly different from the allocated slots;
- Intentional operation of ad hoc air services at times significantly different from the allocated slots (such ad hoc slot misuse must be repeated before any sanctions are applied);
- The use of slots in a significantly different way from that indicated at the time of allocation, eg, operating with a larger aircraft than the slot allocated at a terminal constrained airport, operating at night without an allocation of night movements/night quota, or operating with a noisier aircraft than approved by the Coordinator; or
- Operating without an allocated slot.

The Enforcement Code also states that this list is not exhaustive and that there may be other forms of slot misuse covered by UK Regulations and the Enforcement Code, or which become identified over time, and which may also need to be addressed in the future.

3. Sanctions Available

The UK Regulations permit the coordinator to apply a penalty of up to £20,000 for each instance of slot misuse where the misuse is repeated and intentional. The Enforcement Code states that, where a financial penalty is deemed necessary, the minimum value will normally be £1,000 with higher values for multiple infringements or more serious instances of misuse.

The UK Regulations also give the coordinator the power to issue directions for the purpose of securing compliance with allocated slots. Directions may be issued to air carriers, the airport managing body or the air traffic service provider. Air carriers failing to comply with a direction may be subject to a penalty of up to £20,000.

The UK Regulations also permit the coordinator or schedules facilitator to apply a penalty of up to £20,000 for the failure to provide the coordinator or schedules facilitator with necessary information, or knowingly or recklessly providing false information.

4. Funding

It should be noted that the purpose of the Enforcement Code is to achieve compliance with allocated slots and combat intentional misuse, **not** to generate revenue. The costs of administering the scheme are funded initially by the managing bodies of the four coordinated airports. The airports' costs are refunded from any fine revenue in proportion to their original contributions. Any surplus revenue at the end of the year is submitted to HM Treasury and paid into the Consolidated Fund. This ensures the coordinator's financial independence and seeks to avoid incentives to levy financial penalties except to the extent necessary to achieve adherence to the allocated slots.

5. Communication of the Enforcement Code

ACL undertook an extensive 'publicity campaign' to ensure that all air carriers and other interested parties were aware of the new UK Regulations and Misuse of Slots Enforcement Code.

- The industry was consulted on the Enforcement Code in April 2006.
- Presentations about the Enforcement Code were made at general meetings of the four coordinated airports' Coordination Committees in September/October 2006.
- The Enforcement Code was distributed by email to all regular operators at the four coordinated airports prior to taking effect on 1 January 2007.
- ACL's website was amended with a new 'Sanctions' section where copies of the Enforcement Code and UK Regulations can be downloaded.
- A seminar and Q&A session was held on 8 January 2007 open to all interested parties, which was well attended. The same presentation was given to British Airways, at the carrier's request, due to the large number of staff wishing to attend.
- Presentations about the Enforcement Code were made to the Heathrow, Gatwick and Stansted Slot Performance Committees and the Manchester Airport Coordination Committee Executive.
- Briefing sessions were given at meetings of the UK Operations Managers Association (UKOMA).
- Individual briefing sessions were given to a number of air carriers and GA/Business Aviation handling agents.
- Footer text was added to all messages sent by ACL informing carriers of the scheme and referring to the ACL website for details.

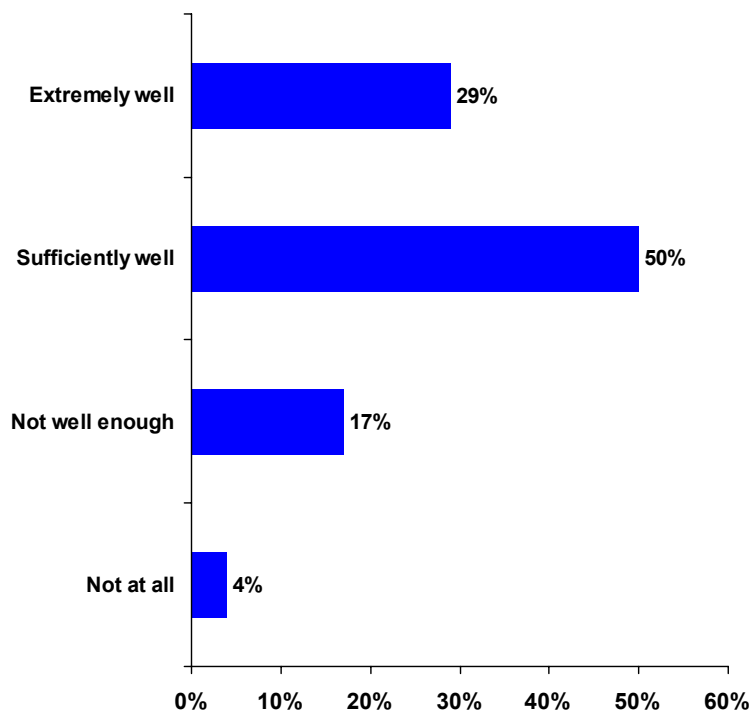
Following the introduction of the Enforcement Code, ACL hosted a meeting on 30 April 2007 to discuss experience of the scheme during its first months of operation. Air carriers from the UK and Ireland, as the operators with the most

experience of the Enforcement Code at that time, were invited to the meeting. As a result of the feedback received, which was very constructive, ACL made some changes to the style and content of the 'standard letters' used in correspondence with carriers and refined its procedures to better target likely instances of intentional slot misuse.

6. Air Carriers' Views on the Enforcement Code

In October 2007 ACL commissioned a customer satisfaction survey of its airline customers worldwide. This survey included questions about the Enforcement Code. Overall, 79% of the airlines who responded thought that ACL had communicated the Enforcement Code 'sufficiently well' or 'extremely well' (Figure 1).

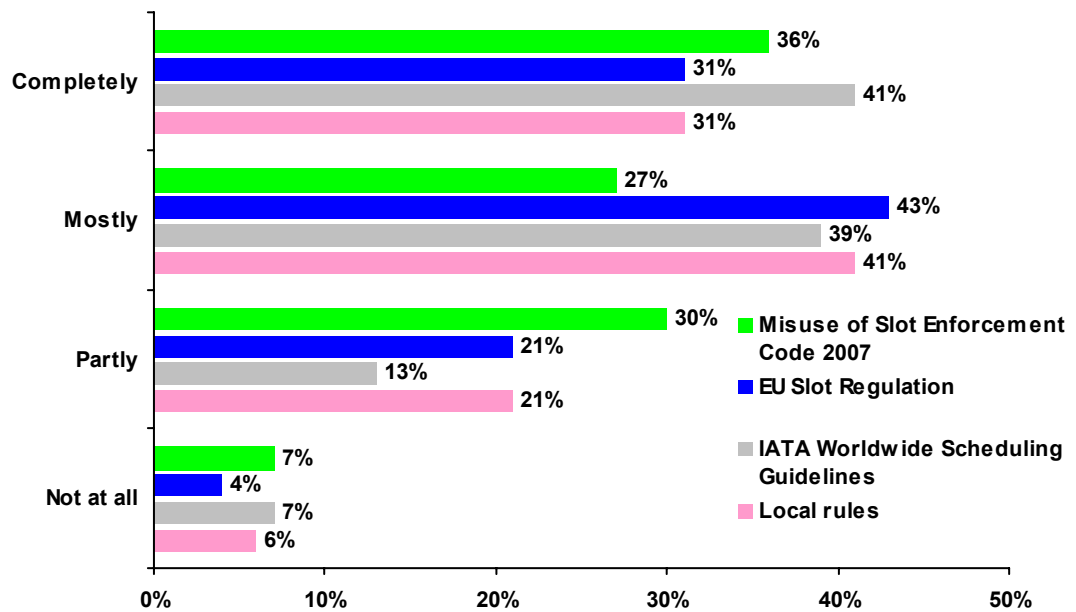
Figure 1: ACL's Communication of the Enforcement Code and Sanctions



When asked about their understanding of the Enforcement Code, 93% had at least a partial understanding and 63% said that they mostly or completely understood the Enforcement Code (Figure 2). These ratings compare well with carriers' understanding of other rules and regulations that have been in effect for longer.

None-the-less, ACL will continue its efforts to publicise the Enforcement Code and ensure that all carriers are fully aware of their responsibilities under the UK Regulations.

Figure 2: Airline Understanding of the Regulations



7. Monitoring Activity

ACL's monitoring processes involve discrepancy checks both in advance of the date of operation (eg, differences between allocated slot times and published times on airline websites) and retrospective analysis of the actual times of operation compared with the allocated slots. The retrospective analysis also identifies any operations without allocated slots.

After identifying significant discrepancies, the air carrier concerned is contacted and asked to provide an explanation. Figure 3 shows the monthly volume of issues investigated across the four coordinated airports during 2007. Most of the issues related to ad hoc operations (as opposed to a regularly scheduled series of flights). Issues with series air services tend to arise around the start of each season: March for a summer season and October for a winter season.

There were a total of 613 issues raised with 247 different air carriers and aircraft operators during 2007, averaging around 70 issues per month during the first half of Summer 2007 (March-June) and about 45 per month thereafter.

Figure 4 shows the number of issues investigated by airport during 2007.

Figure 3: Slot Issues Investigated per Month

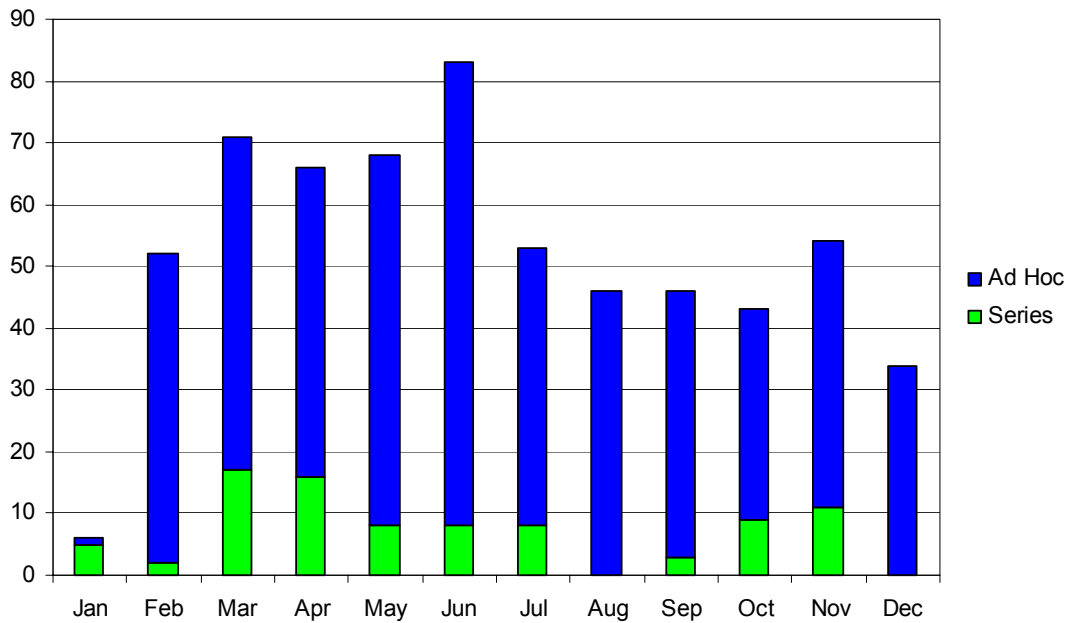
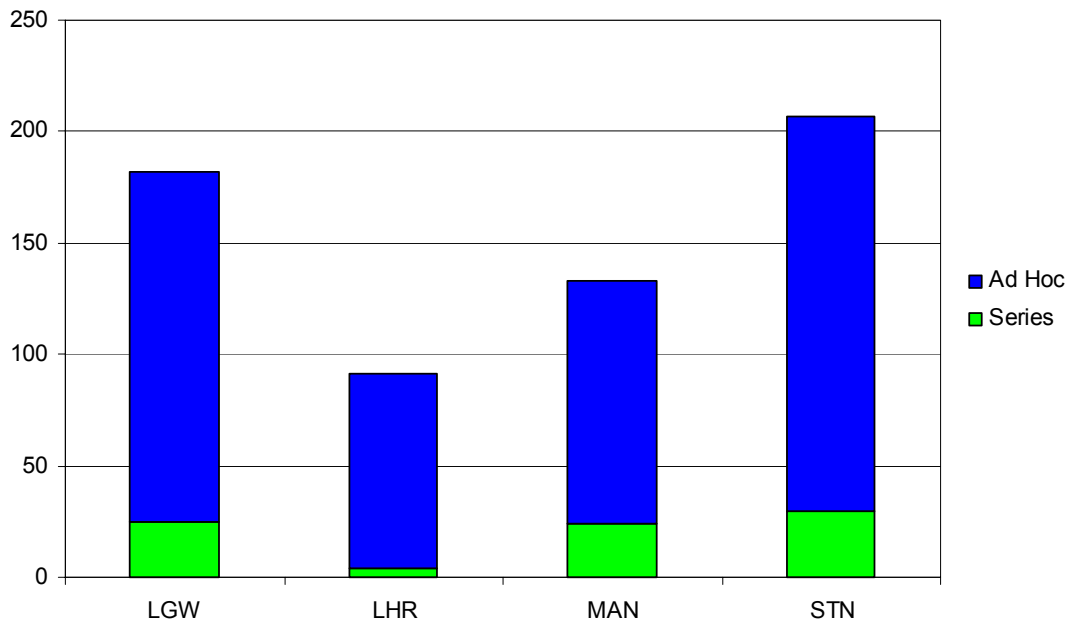


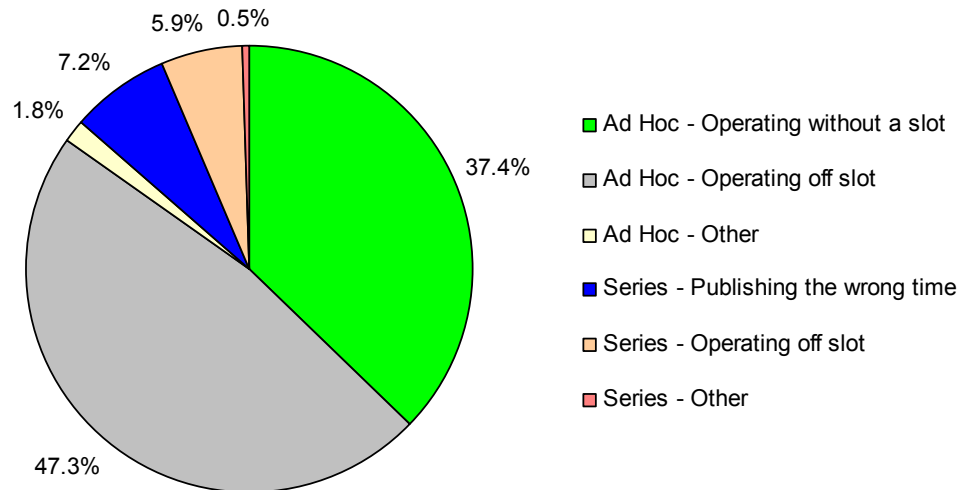
Figure 4: Slot Issues Investigated by Airport



The types of issues investigated are broken down in Figure 5. Overall, 86% of issues related to ad hoc services – mainly operations without an allocated slot or operations at a time significantly different from the allocated slot. The issues with series air services generally related to either publishing or operating at the wrong time.

It should be noted that, prior to the introduction of the Enforcement Code, there were no effective sanctions against slot misuse by ad hoc air services. The administrative sanctions of the EU Slot Regulations 2004 (eg, Article 14.4) relate to loss of historic rights to a series of slots, but there are no historic rights associated with ad hoc air services.

Figure 5: Types of Issues Investigated



8. Warnings and Sanctions

Following the initial investigation of a potential slot misuse issue, the coordinator must decide whether a breach of the Enforcement Code has occurred. If it is a one-off incident then a warning letter is issued informing the air carrier that a further occurrence of the breach within the next 12 months may result in a financial sanction. If it is a repeated and intentional breach then a financial penalty may be applied.

The number of warnings and sanctions issued each month during 2007 is shown in Figure 6. Of the 613 issues investigated, 91 (15%) were deemed to be a breach of the Enforcement Code.

Figure 6: Warnings and Sanctions Issued by Month

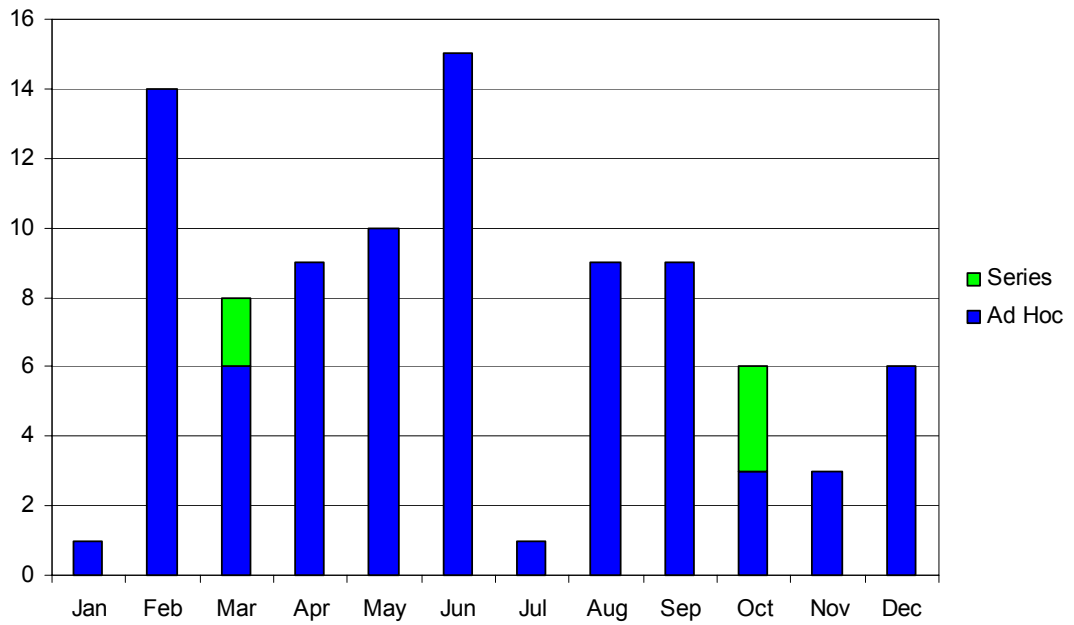
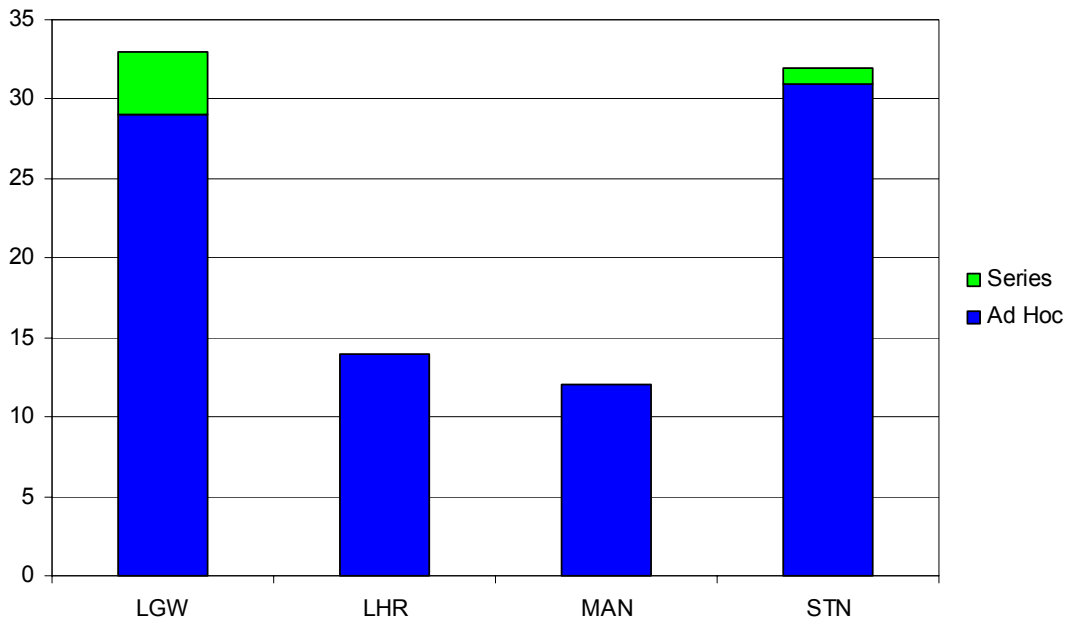


Figure 7 shows the number of warnings or sanctions issued at each airport during 2007. Most of the issues have arisen at Gatwick and Stansted airports, mirroring the pattern of 'issues investigated' shown in Figure 4.

Figure 7: Warnings and Sanctions Issued by Airport



9. Sanctions Applied

The sanctions applied during 2007, which are published on the ACL website, are summarised in the tables below. The total value of sanctions applied during 2007 was £59,000.

Table 1a: Sanctions Applied for Misuse by Series Air Services

Air Carrier	Airport / Season	Issue	Sanction
EasyJet	Gatwick – S07	Operating at a different time	£20,000
Ryanair	Stansted – S07	Operating at a different time	£20,000
Jet2	Gatwick – S07	Operating at a different time	£9,000

Table 1b: Sanctions Applied for Misuse by Ad Hoc Air Services

Air Carrier	Airport / Season	Issue	Sanction
Thomsonfly	Gatwick – S07	Operating without a slot	£1,000
FlyBE	Manchester – S07	Operating without a slot	£1,000
Thomas Cook	Gatwick – S07	Operating at a different time	£1,000
Thomas Cook	Gatwick – S07	Operating at a different time	£2,000
Thomas Cook	Gatwick – W07	Operating at a different time	£5,000

10. Independent Review

Air carriers that are dissatisfied with the coordinator's decision to apply a sanction may request an Independent Review. Two Independent Reviewers were appointed by ACL for this purpose following consultation with industry stakeholders, and the appointments were approved by the Secretary of State.

There was one Independent Review during 2007. The review was requested by Zoom Airlines Inc following the application of a sanction for operating without allocated slots at Gatwick Airport on four dates during June 2007.

The case centred on the interpretation of Article 10.8 of the EU Slot Regulations 2004 concerning air services operated as part of a shared operation.

Zoom Airlines Inc, a Canadian registered air carrier, had been operating at Gatwick Airport without slots allocated to it by the coordinator. Slots had been allocated for the service to Zoom Airlines Ltd, a UK registered sister air carrier. When ACL raised the issue with the carriers concerned, they claimed to be operating as part of a shared operation under Article 10.8.

Article 10.8 states that '*Air carriers involved in shared operations shall advise coordinators of the detail of such operations prior to the beginning of such operations*'. No such advice had been given and the details of the purported shared operation had not been disclosed to the coordinator⁽³⁾. Therefore, the coordinator was not given the opportunity to determine whether the purported

⁽³⁾ During the subsequent Independent Review, Zoom attributed this to an administrative oversight.

shared operation was compliant with the Regulations. After ACL identified the discrepancy, the slots were transferred to Zoom Airlines Inc (the air carrier operating the service) and the service continued to operate normally for the remainder of the summer season.

After extensive dialogue with the air carriers concerned and in the absence of any evidence that the purported shared operation involved a substantive level of co-operation between the air carriers, ACL concluded that the slots allocated to Zoom Airlines Ltd had not been operated as allocated by the coordinator for the purposes of Article 8.2 (the use if or lose it rule), and that Zoom Airlines Inc had operated without slots allocated to it in breach of the Enforcement Code.

On 7 August 2007, ACL issued a Notice of Final Decision applying a financial penalty to Zoom Airlines Inc. Zoom requested an Independent Review of the decision and an oral hearing, which was held on 18 September 2007. The presiding Independent Reviewer was Mr John Dempster.

Zoom Airlines Inc argued that it had not operated without allocated slots but had used slots allocated to its sister company Zoom Airlines Ltd as part of a shared operation (albeit without notifying the coordinator); that there had been no prejudice to airport operations; that the situation had been rectified quickly following ACL raising the matter; and that, in any case, operating without a slot is not a breach of the Regulations.

Having heard from both parties, the Independent Reviewer concluded that, in his view, the operations constituted 'shared operations' and that Zoom was guilty only of what was in his view the comparatively minor failure of not advising the coordinator; that the situation had been rectified quickly after it came to light; and that Zoom's failings did not amount to a sanctionable offence. The Independent Reviewer, therefore, instructed ACL to cancel its decision to sanction Zoom Airline Inc.

The Independent Reviewer concluded in ACL's favour on the point that operating without an allocated slot at a coordinated airport is type of misuse covered by the Enforcement Code and a breach of the Regulations.

11. Effectiveness of the Enforcement Code

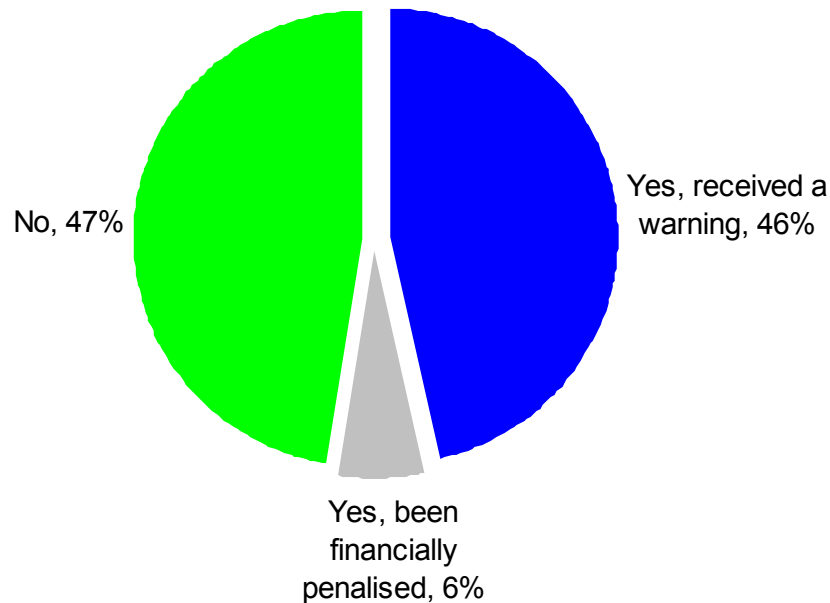
It is difficult to accurately measure the overall effect of the Enforcement Code on slot adherence. This is particularly true for operations at times different than the allocated slot time because there are many valid operational reasons why air services do not operate as scheduled. These punctuality issues tend to obscure the number of air services that may be *intentionally* operating at a different time.

Measures of the effectiveness of the Enforcement Code can be seen in the airline customer satisfaction survey commissioned by ACL. Of all the respondents, 46% had received a formal warning about misuse and 6% had been financially penalised (Figure 8).

Of the air carriers that had received a warning or sanction, all (100%) reporting having taken action to better adhere to allocated slots in the future, while 42% of air carriers that had **not** received a warning or sanction had none-the-less taken pre-emptive action to ensure compliance. Actions included reviewing

procedures, improved internal communications, operational changes, improved software and scheduling techniques, and bringing forward planning timescales. These actions are consistent with ACL's observation that many of the slot adherence issues arise from administrative failures rather than a disregard for the slot allocation system.

Figure 8: Airline Experience of the Enforcement Code



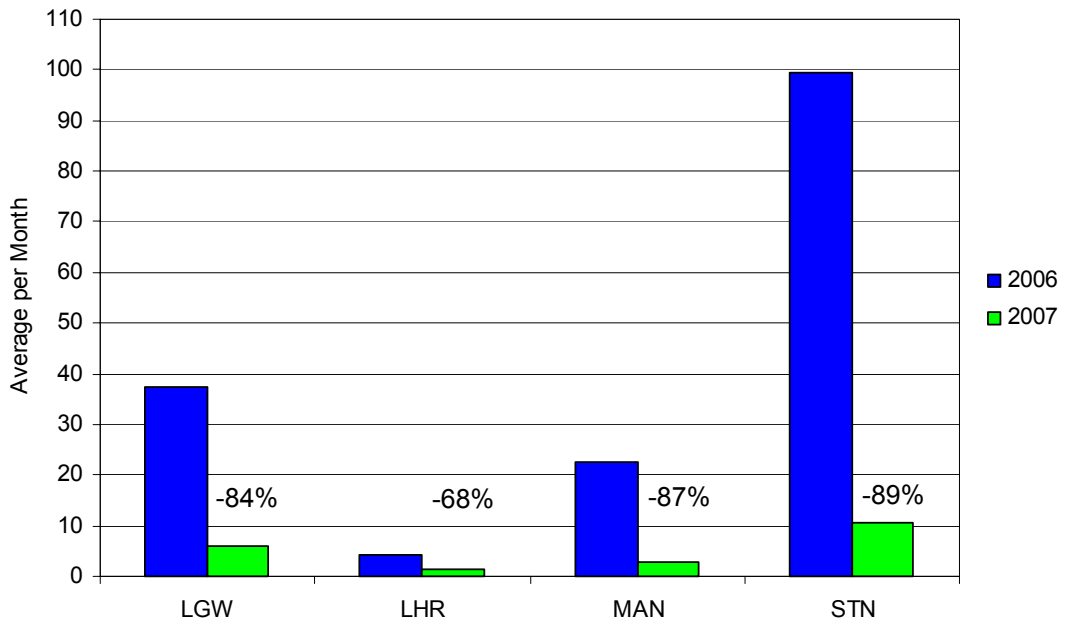
Another measure of the effectiveness of the Enforcement Code on slot adherence is the reduction in the number of operations without allocated slots (Figure 9), which can be more clearly identified than time discrepancies. Since the introduction of the Enforcement Code there has been a dramatic improvement in the number of operations without allocated slots in 2007 – an 87% reduction overall.

Evidence that this improvement is attributable to the Enforcement Code is gained by contrasting the performance of UK coordinated airports with Dublin Airport (there is no sanction scheme in effect in the Republic of Ireland).

Dublin Airport is good comparator as it is similar to Stansted or Manchester airports in terms of overall size and the degree of slot scarcity. Many of the Dublin air carriers also have large UK operations. ACL's management of the Dublin slot coordination process is the same as at the four coordinated airports in the UK.

During Summer 2007 the number of operations without slots at Dublin Airport was 100-150 per month. This is similar to the performance of Stansted Airport during 2006, prior to the adoption of the Enforcement Code.

Figure 9: Number of Operations without Slots – 2007 v 2006



12. Views of Air Carriers

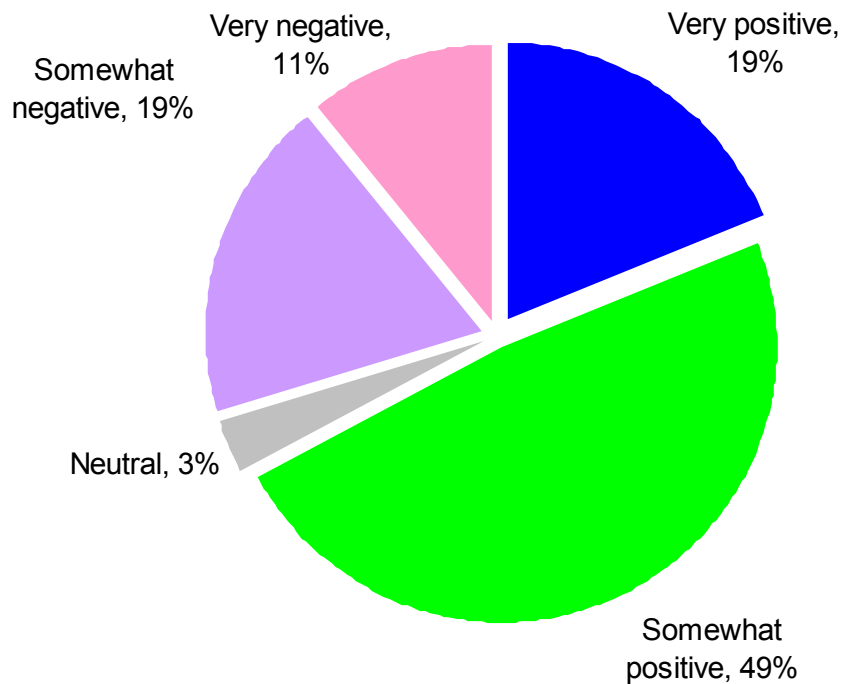
ACL's airline customer satisfaction survey asked about attitudes towards the Enforcement Code. Views were sharply divided with few air carriers neutral towards the new rules. However, a large majority (68%) had a positive view about the Enforcement Code, compared with 30% who were negative (Figure 10).

There was a common view amongst the 'positive' air carriers that they sought to fully adhere to the allocated slots and that they made operational and commercial compromises to do so. They saw an effective Enforcement Code as a means of ensuring that other air carriers did not gain an unfair advantage by flouting the slot rules.

Amongst the air carriers with negative views there were concerns that the Enforcement Code had resulted in a loss of flexibility to operate at ideal times (albeit times when slots may not be available). There were also concerns about the workload involved in achieving slot compliance and in replying to the coordinator's queries about discrepancies.

Given that the Enforcement Code involves the application of financial penalties to air carriers, it is unlikely to be universally popular. In that context, the broad support for the scheme as administered by ACL in its first year of operation is encouraging.

Figure 10: Airline Support for the Enforcement Code



13. Conclusion

The introduction of the Enforcement Code has led to significant changes in the behaviour of air carriers leading to greater compliance with the allocated slots and a significant reduction in the number of operations without a slot.

Realistically the step-change in behaviours seen in the first year of the Enforcement Code is unlikely to be repeated, but ACL will seek to sustain the level of improvement in compliance that has been achieved and seek further incremental improvements.

These changes in behaviour have been achieved by applying a relatively small number (8) of financial penalties.

It is gratifying to ACL that, despite the number of investigations and warnings issued to air carriers during 2007, the relationships between ACL and the air carriers remains positive.

The first year of the Enforcement Code has brought to light some ambiguities and omissions in the drafting of the Code and ACL is of the view that some changes to the Code are appropriate. ACL will shortly be issuing a consultation paper to all industry stakeholders proposing some improvements to the Enforcement Code.

A copy of this report is available in the 'Slot Sanctions' area of the ACL web site (www.acl-uk.org).