

MISUSE OF SLOTS ENFORCEMENT CODE

ANNUAL REPORT – 2008

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.

In June 2008, ACL proposed a number of clarifications and improvements to the Enforcement Code and consulted the industry. The Enforcement Code was updated on 22 September 2008, taking into account the views expressed by the respondents to 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 the year April 2008 to March 2009. A copy of the revised Enforcement Code (22 September 2008 version) is included as an Appendix to this report.

2. Amendments to the Enforcement Code

The Enforcement Code came into effect in January 2007. There is a requirement to review the Enforcement Code in April 2008 and every 2 years thereafter. In June 2008, ACL proposed a number of clarifications and improvements to the Enforcement Code and consulted the industry.

Of the 211 consultation documents distributed to stakeholders, ACL received 15 responses of which 12 were from Airlines representing all sections of the industry, 1 from BAR UK and 2 from Airports (Manchester Airport and the BAA).

As a result of this review the following significant changes were made to the Enforcement Code:

Section 4 (Types of Slot Misuse Covered) was amended to make it clear that operating without a slot at a coordinated airport was a form of misuse.

A new type of misuse was added to Section 4: the failure to operate a slot allocated by the coordinator without cancelling it in advance, where the non-operation is not the result of factors beyond the air carrier's reasonable control, and thereby causing prejudice to airport and air traffic operations.

The definition of 'repeatedly' was amended for clarity. The period within which instances would be considered repeated was reduced from 12 to 6 months to better align with the scheduling seasons.

The definition of 'beyond reasonable control' was amended to clarify that the reliance of an air carrier (including General and Business Aviation operator) on incorrect information provided by its agent is not a matter beyond its reasonable control.

The Enforcement Code was amended to make it clear that every misuse of slots may be subject to a sanction even though there may be an ongoing dialogue between the air carrier and the coordinator to find a scheduling solution.

A number of amendments were made to the Enforcement Code regarding the administration of the sanction scheme, in particular the basis of its funding and clarity that the coordinator does not benefit, financially or otherwise, from the scheme.

3. Types of Misuse

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

- Operation of a series of air services at times significantly different from the allocated slots.
- Operation of an ad hoc air services at times significantly different from the allocated slots;
- The use of a slot 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 approved by the Coordinator.
- Operation of an air service without an allocated slot.
- The failure to operate a slot allocated by the coordinator without cancelling it in advance, where the non-operation is not the result of factors beyond the air carrier's reasonable control, and thereby causing prejudice to airport or air traffic operations.

Each type of misuse above must be both repeated and intentional before it can be liable for a possible sanction. To be treated as repeated misuse it should be of the same type at a particular airport.

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.

4. 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.

5. 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.

6. Monitoring Activity

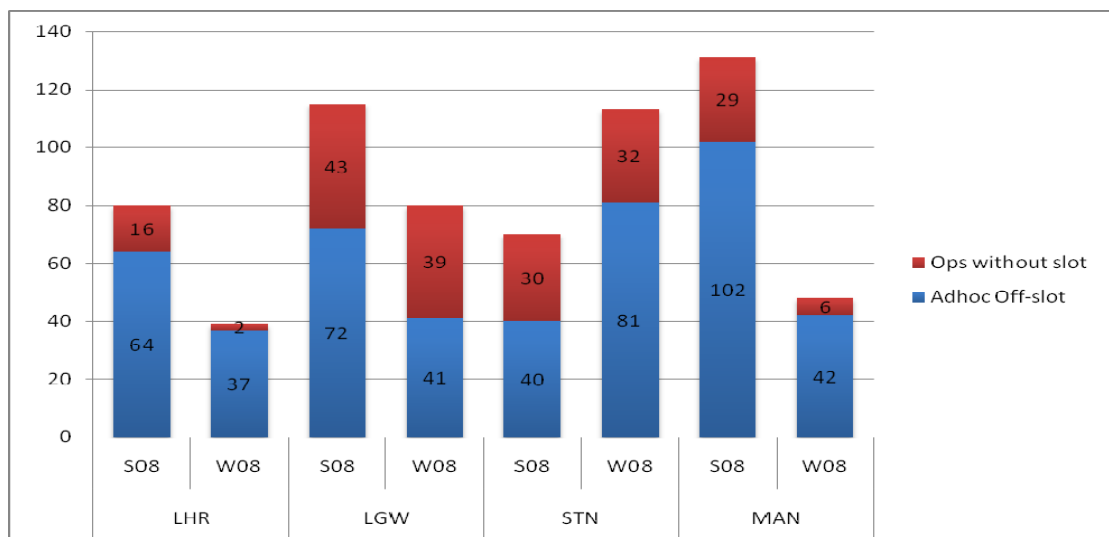
ACL's monitoring processes involve discrepancy checks both in advance of the date of operation (eg, differences between allocated slot times and published times on airline websites) and retrospective analysis of the actual times of operation compared with the allocated slots. The retrospective analysis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

After identifying significant discrepancies, the air carrier concerned is contacted and asked to provide an explanation. Figure 1 shows the seasonal volume of issues investigated across the four coordinated airports during the Summer 2008 and Winter 2008/09 scheduling seasons. Most of the issues relate to ad hoc operations at times different to the slot held.

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. However these tend to be small in number.

There were a total of 676 issues raised during the 2008/09 year, an increase of 9.7% on the 2007 calendar year. The majority of the queries raised were during the traditionally busier summer period. As with the previous year the majority of the queries relate to adhoc off slot operations.

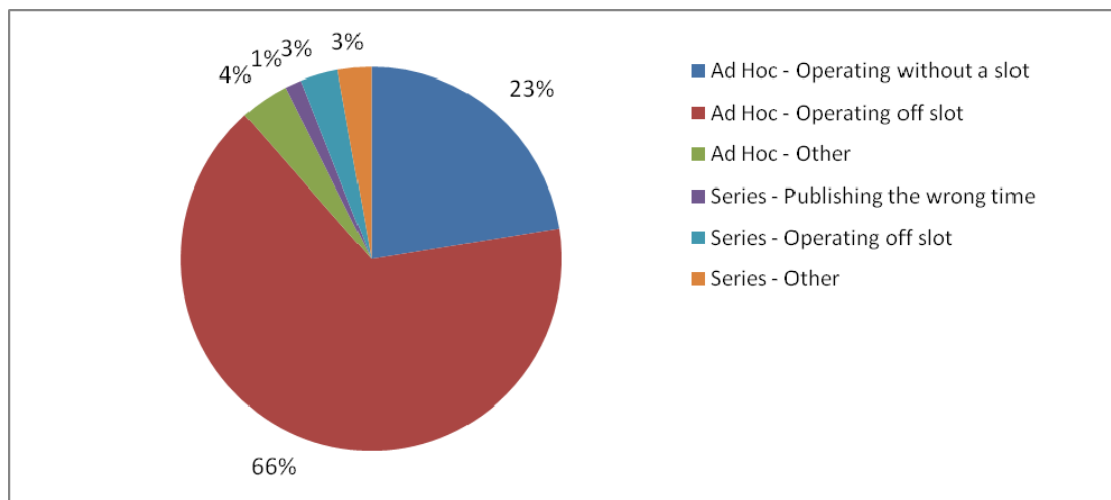
Figure 1: Sanctions Issues raised by airport



The types of issues investigated are broken down in Figure 2. Overall, 93% 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 2: Types of Issues Investigated

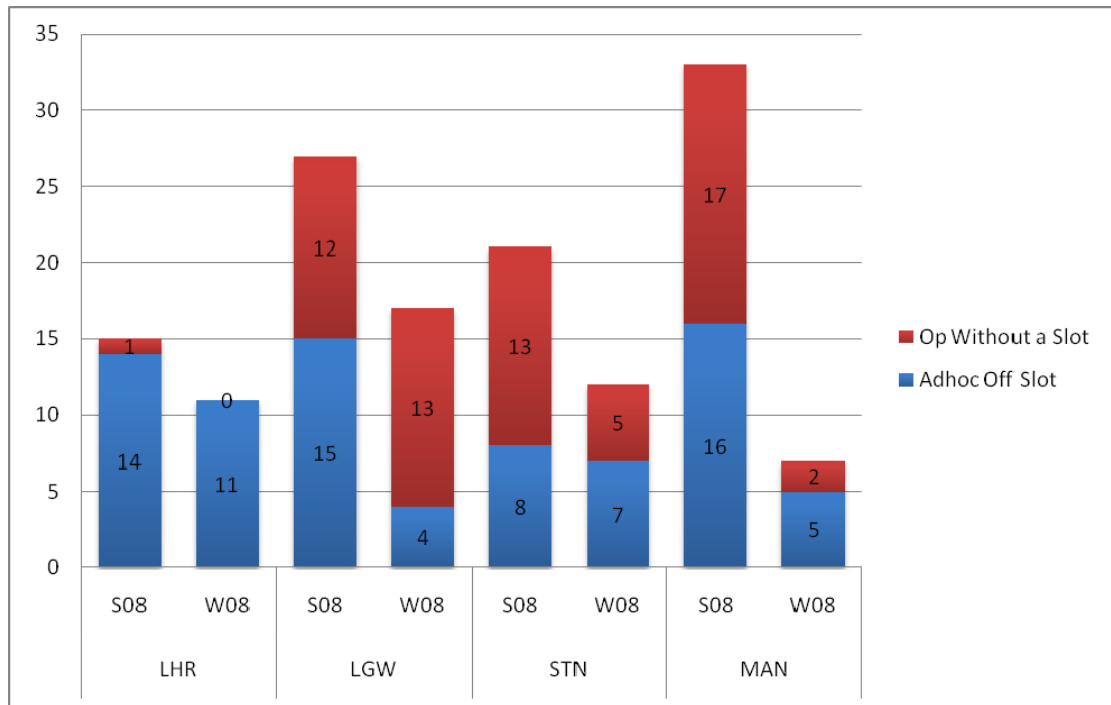


7. Warnings and Sanctions

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 6 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 issued each season by airport during 2008/09 is shown in Figure 3. Of the 676 issues investigated, 143 (21%) were deemed to be a breach of the Enforcement Code.

Figure 3: Warnings Issued by Season/Airport



8. Sanctions Applied

The sanctions applied during 2008, which are published on the ACL website, are summarised in the tables below. The total value of sanctions applied during 2008 was £44,000.

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

Air Carrier	Airport / Season	Issue	Sanction
Delta Airlines Inc	Gatwick – W08	Operating at a different time	£14,000

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

Air Carrier	Airport / Season	Issue	Sanction
Thomsonfly	Gatwick – W08	Operating at a different time	£4,000
Thomas Cook	Gatwick – W08	Operating at a different time	£3,000
Astraeus	Stansted W08	Operating at a different time	£1,000
Saudi Arabian Airways (Royal & VIP)	Heathrow – W08	Operating at a different time	£4,000
Thomas Cook	Gatwick – W08	Operating at a different time	£2,000
easyjet	Gatwick – S08	Operating at a different time	£4,000
Saudi Arabian Airways (Royal & VIP)	Heathrow – S08	Operating at a different time	£3,000
Thomsonfly	Gatwick – W08	Operating at a different time	£4,000
Monarch	Manchester - S08	Operating without a slot	£1,000
BA Cityflyer	Stansted - S08	Operating without a slot	£1,000

Netjets USA	Heathrow – W08	Operating at a different time	£1,000
Monarch	Gatwick – S08	Operating at a different time	£1,000
Thomsonfly	Gatwick – S08	Operating without a slot	£1,000

9. Independent Review

No independent reviews occurred during the 2008/09 year.

10. 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.

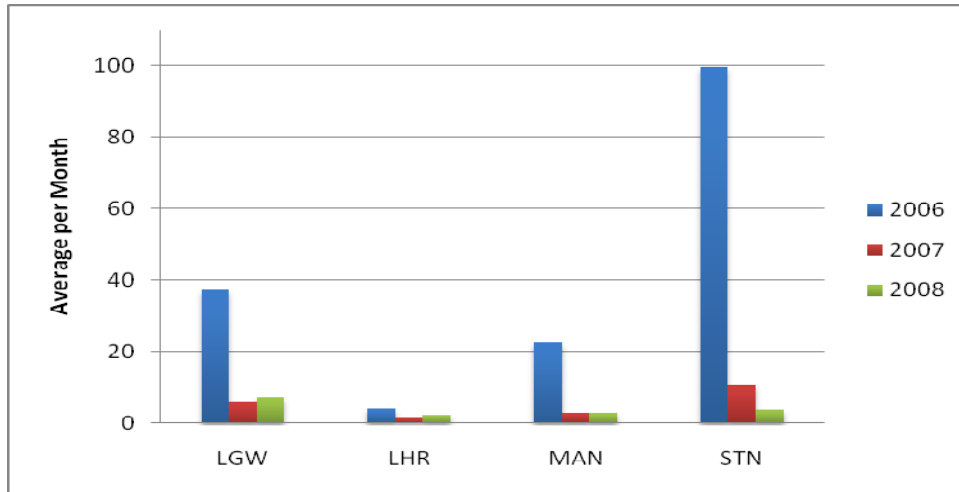
A measure of the effectiveness of the Enforcement Code on slot adherence is the reduction in the number of operations without allocated slots (Figure 4), which can be more clearly identified than time discrepancies. In the first year of the scheme there was a dramatic improvement in the number of operations without allocated slots (87% reduction overall). This performance has largely been maintained during 2008/09, with Stansted achieving a further reduction..

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 2008 the average number of operations without slots at Dublin Airport was 157 per month, compared with 2-5 per month at UK airports.

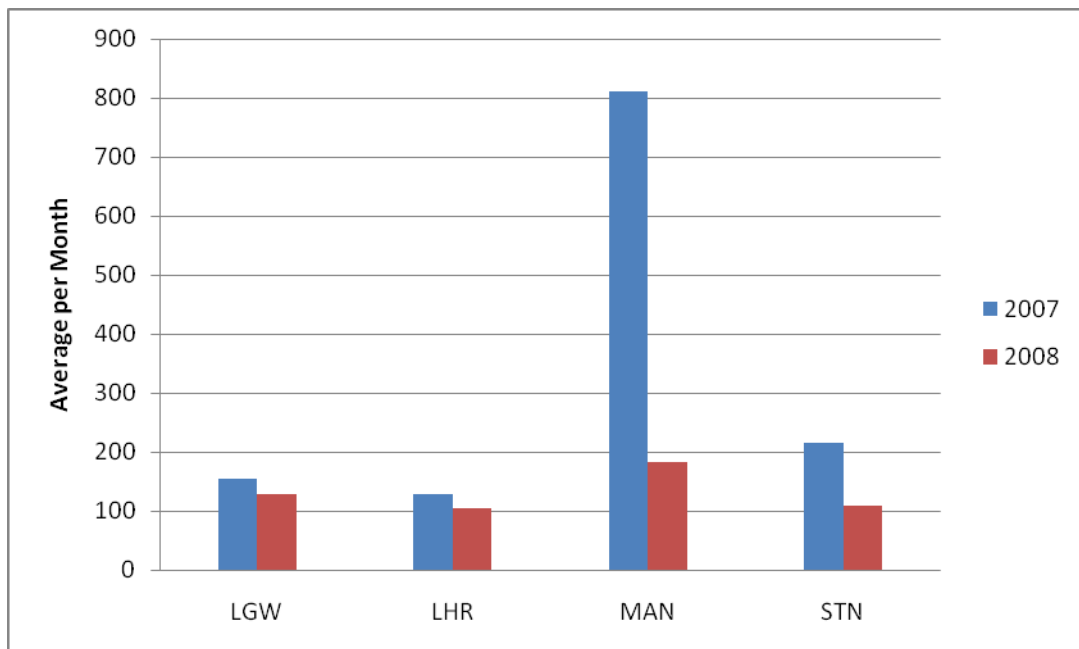
Figure 4: Number of Operations without Slots 2006 - 2008



The failure to operate a slot allocated by the coordinator without cancelling it in advance where the non-operation is not the result of factors beyond the air carrier's reasonable control was added as a form of misuse to the Enforcement Code in September 2008.

Whilst the dramatic reduction seen with the number of operation without a slot is unlikely to be seen due to the numerous legitimate reasons for not cancelling a slot, the introduction of this type of misuse to the code has seen the number of slots held, that subsequently did not operate reduced at all UK coordinated airports season on season. (Figure 5)

Figure 5: Number of slots held where the flights did not operate and the slots were not cancelled



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 was unlikely to be repeated, but ACL has maintained the level of improvement and where possible sought to reduce misuse further.

These changes in behaviour have been achieved by applying a relatively small number (13) of financial penalties, albeit an increase on the eight issued in the previous period.

It is gratifying to ACL that, despite the number of investigations and warnings issued to air carriers during 2008/09, the relationships between ACL and the air carriers remains positive.

The amendment made to the Enforcement Code in September 2008 has removed ambiguities and omissions in the drafting of the Code which has contributed to continued success of the scheme in reducing misuse of slots at coordinated airports.

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