

CONTROLLING THE MISUSE OF SLOTS AT COORDINATED AIRPORTS IN THE UK

MISUSE OF SLOTS ENFORCEMENT CODE

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 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.
- 1.3 This enforcement code (the **Code**) was adopted by the Coordinator to take effect on the same date that the UK Regulations came into effect.
- 1.4 In June 2008, June 2010, November 2011, June 2013 and July 2017, Airport Coordination Limited (ACL or the Coordinator) proposed a number of clarifications and improvements to the Code and consulted the industry. The Code was updated in September 2008, September 2010, November 2011, August 2013 and November 2017 taking into account the views expressed by the respondents to the consultation. The updated version of the Code takes effect from the date written at the top of this Code.

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, which includes an off slot operation or operating without an allocated slot, at the coordinated airports in the United Kingdom – currently Heathrow, Gatwick, London City, Stansted, Luton, Birmingham and Manchester - 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, off slot operation or the operation of a slot in a manner inconsistent with the manner indicated when the slot was allocated (for example, the use of a larger aircraft which causes prejudice to the airport or air traffic operations) can have a significant impact on the level of delays, and access to airport facilities, 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 encourage, in a proportionate and fair way, the use of all

slots 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 but do not penalise carriers to the extent they can demonstrate that the breach of UK Regulation 14 was caused by factors beyond its reasonable control. The Coordinator is not obliged to give any advance notice of a breach of Regulation 14 before imposing a penalty; however sanctions will ordinarily only be applied when the normal coordination process and dialogue between the Coordinator and the air carrier to find a solution to the air carrier's scheduling problems has failed to prevent the misuse of slots.

3 OTHER CONCURRENT ADMINISTRATIVE SANCTIONS

UK Regulations 14-19 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 may lose its entitlement to claim the equivalent slots in the next scheduling period.

In the case of applying Article 14.4 of the Council Regulation, the Coordinator would not take these steps without first issuing a warning and hearing the carrier either orally or in writing.

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 dealing with the same types of misuse, UK Regulations 14-19 provide for separate sanctions - financial penalties and the issuance of directions to secure compliance. 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. Five common types of misuse are:

- 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, 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.

- 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 6 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 6 months operated by that air carrier to or from the airport in question.
- 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 failure to use a slot the mere non-arrival of the flight can be sufficient to demonstrate intent not to use an allocated slot. In the case of operating a slot in a significantly different way from that indicated at the time of allocation, it is sufficient to show that the air carrier planned to operate with the aircraft actually used.
- 5.3 **Beyond its reasonable control** – This could include exceptional weather conditions or industrial action, air traffic control regulations/CTOTs (save where those have been applied due to airline off-schedule activity within that carrier's control) and technical issues and (in all

cases) which are demonstrated to have caused the breach of UK Regulation 14. Note that the examples given will not automatically be valid reasons just by virtue of being listed in this definition; the burden of proof is on the carrier to demonstrate, on a balance of probabilities, that its failure to comply with its duty under UK Regulation 14 was beyond its reasonable control. 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 a matter beyond its reasonable control.

- 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 for the airport will be regarded as a significantly different time for the purpose of UK Regulation 14 as it is likely to affect other air carriers. In the case of operating a slot in a significantly different way from that indicated at the time of allocation, the following is a non-exclusive list of examples: operating a larger aircraft, operating at night without an allocation of night movements/night quota, or operating with a noisier aircraft type than indicated by the carrier when the Coordinator allocated the slot.

- 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).
- (c) failure to cancel an allocated slot which an air carrier knows it will not use means that other services may lose the opportunity to use that slot so affecting the efficient use of airport capacity.

- 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, including over a particular scheduling period in respect of a series of slots;
- 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 in the current or previous season(s) 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 or earlier sanction for similar off slot operations, 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; and
- 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 UK Regulation 16 provides for financial penalties of up to £20,000 to be applied on each occasion on which an air carrier fails to comply with either of the duties set out in Regulations 14 and 15(4). Multiple infringements could trigger several financial penalties and, for each further breach significantly increased financial penalties could be imposed up to £20,000. In determining the amount of the penalty to be levied, ACL will look to ensure that any penalty is an effective, dissuasive and proportionate deterrent to future misuse.

- 6.4 Some examples of slot misuse and possible penalties are in the Annex to this Code. These are provided by way of example only; the amount of the financial penalty will always be assessed by ACL on a case by case basis, according to the specific facts.
- 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)).**

For the avoidance of doubt, pursuant to UK Regulation 16.4, the burden of proof is on the carrier to demonstrate (on a balance of probabilities) that a failure was beyond its reasonable control. Exactly what evidence is required will depend on the circumstances, but a mere assertion that a particular issue arose may not be enough. The carrier will need to explain to the Coordinator what the issue was, where and when on route it arose, how that issue caused the carrier to fail in its duty under UK Regulation 14 and why the carrier could not reasonably have prevented the issue from causing the failure. The carrier may be required to adduce satisfactory evidence to back up its explanations (for example official weather warnings issued by the affected airport or ATC and/or airport/ATC imposed weather regulation, flight logs and tech reports).

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.

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 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 14 working days, but less in urgent cases). **(Regulation 17(2)(a))**. A notice may include a proposed sanction (and the sanction may then be imposed) for the period of misuse of slots even though subsequently a scheduling solution to the problem may be found. The air carrier on whom a penalty is proposed, or the person to whom a direction is proposed to be issued may ask in writing for a formal oral hearing **(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))**. It is incumbent on the carrier to ensure that its points are conveyed in writing, or at such a hearing, and not simply by way of informal dialogue as information disclosed by the latter may not be taken into account. The air carrier will be given a reasonable time, normally 21 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, for example, by issuing directions or by withdrawing slots.

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.

7.5 Prevention of Further Misuse

The Coordinator will work with the air carrier at all stages of the process to see if a scheduling solution can be found to end the problem and to prevent further misuse.

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. Such reporting may include the results of Independent Reviews which have been concluded in the relevant period (which may be redacted where the relevant carrier considers there to be commercially or operationally sensitive material which should not be disclosed). 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 (setting out the information required under paragraph 14.2 above), addressed to the Independent Reviewer of the Coordinator's decisions at: Attention Independent Reviewer, c/o Airport Coordination Limited, Viewpoint, 240 London Road, Staines, TW18 4JT, UK; with a copy of the request for review sent to the Coordinator. The submission may be sent by email to sanctions@acl-uk.org, marked for the attention of the Independent Reviewer. 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 which of the specific grounds "a" to "d" under UK Regulation 17(4) the carrier is relying upon as grounds for the review, and set out in full any supporting evidence (and in the case of new evidence, explain why that evidence could not reasonably have been made available to the co-ordinator earlier and before the decision was made). Any evidence must be submitted within the 14 day period referred to in para 14.3(d) below;
- (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; and
- (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. The carrier must, therefore, ensure that any financial penalty is paid by the due date specified in the notice of final decision issued by the Coordinator, notwithstanding that it has requested an Independent Review. 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 to be recorded, 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 Independent Reviewer may provide for persons to attend an oral hearing by teleconference or video conference facilities. The Coordinator is entitled to be present at such hearing. 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

practicable. The person seeking the review will identify, at least 7 days before the hearing, 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."

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.

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, 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 a process of financing the cost of administering the sanction scheme which does not benefit the Coordinator except to enable the Coordinator to recover its costs.

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 proportions to be agreed each year.

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 operated at the airports during the previous calendar year.

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 Department for Transport. These accounts will be submitted annually to the Department for Transport and HM Treasury.

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 normally be reviewed every three years unless changes in the Regulatory framework or other factors require urgent amendments to the Code outside of the normal timetable for consultations and revisions to the Code. 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))**

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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 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.

The failure to operate a slot allocated by the coordinator without cancelling it in advance

(a) The Problem

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.

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.

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

(b) Example

The failure to operate a slot allocated by the Coordinator without cancelling in advance where a flight has been cancelled in advance of the operation on a planned basis and not as a result of operational disruption. Each subsequent non-operation will be considered as misuse and will be liable for a financial penalty

NOTES