



Department for Transport

SLOT USAGE RULE ALLEVIATION FOR WINTER 2021/22

CONSULTATION RESPONSE FORM

Introduction

As a result of the impact of the COVID-19 crisis on air travel demand, the 80:20 'use it or lose it' slot usage rule has been waived since the Summer 2020 season, with the current unconditional waiver due to expire at the end of the current season on 30 October 2021. COVID-19 continues to have a significant impact on the aviation sector including restrictions on travel and general uncertainty due to the changing infection rates in different countries.

Under the powers granted to us through section 12 of the Air Traffic Management and Unmanned Aircraft (ATMUA) Act 2021 ("the Act"), there is now greater legal scope to introduce alternative forms of alleviation from the slot usage rules for Winter 2021/22 if required. These provisions give the Secretary of State for Transport the power, where he is satisfied that demand is likely to remain suppressed due to COVID-19, to continue the waiver, or adjust the 80:20 ratio, and the option to apply conditions to any such future alleviation, amongst other things. These powers should better enable us to further a range of objectives – future connectivity, efficient slot usage and the financial resilience of the sector, while also supporting and encouraging the recovery of the aviation industry.

These powers are exercisable if the Secretary of State considers that COVID-19 has led to a reduction in air traffic compared to the corresponding period in a relevant previous year that is likely to persist. As of end-April 2021, UK flight traffic remains more than 75% below pre-pandemic levels, and international arrival passengers are down more than 90%, pending data following the relaxation of restrictions on discretionary international travel that took place on 17 May. The extent and speed of the sector's recovery are uncertain, and even the more optimistic projections indicate that air traffic will remain significantly reduced during Winter 2021/22 compared to prior to the pandemic. Many of the risks identified previously, which have led to the implementation of the previous waivers of the slot usage rule, therefore remain. We currently expect that a reduction in air traffic, compared to corresponding pre-pandemic levels, is likely to persist for the Winter 2021/22 season, at least.

This consultation document considers only the **Winter 2021/22** season. Our objectives for Winter 2021/22 in relation to airport slots are:

- to strike a balance between discouraging slot hoarding and inefficient slot use
- to support airlines' financial health
- to protect future connectivity

The Secretary of State's powers include the ability to provide a full alleviation from the 80:20 usage rule, modify the 80% requirement to provide a partial alleviation, attach conditions to any alleviation, and make other relevant amendments to Regulation 95/93 (which is retained in UK law following the end of the Transition Period). They also allow the Secretary of State to amend related domestic regulations to ensure the slot allocation process operates effectively during the period of any alleviation, including to provide the slot coordinator with related enforcement powers (such as directions and penalties). Use of this power requires secondary legislation, which requires approval by both Houses of Parliament. This targeted consultation with industry stakeholders concerns the nature and extent of any alleviation for the Winter 2021/22 season.

Using the powers provided under section 12 of the Act, **the Department is planning to provide further alleviation for the Winter 2021/22 season.** In the past some industry stakeholders have expressed concern that waivers may operate to promote unfair retention of slots by airlines that have no intention of operating them and prevent these slots being reallocated to newer entrants to the market. To mitigate against these concerns for Winter 2021/22, we are proposing an approach for Winter 2021/22 which includes the following elements:

1. In view of the anticipated lower level of demand compared to corresponding pre-pandemic levels, amending the 80:20 'use it or lose it' threshold (utilisation requirement) to a lower level;
2. Allowing airlines that hand back a full series of slots (potentially within certain limits) by the handback deadline to retain their historic rights to operate them in the equivalent season the following year; and
3. Revising the 'force majeure' (justified non-utilisation) provisions to cover certain COVID-19-related travel restrictions.

As with the Summer 2021 waiver, the Department is keen to engage with stakeholders to gather views and thoughts on the proposed alleviation measures to create the optimal package of measures to support resilience and recovery.

The Department for Transport would therefore welcome your views on the alleviation proposed for Winter 2021/22, and on any limitations or conditions that should be attached.

Background

In February 2021, after considering feedback from industry, the Secretary of State for Transport extended the waiver to the slot usage rules for Summer 2021. So far, slot usage relief has been granted for three consecutive slots seasons since the beginning of the COVID-19 crisis in March 2020:

1. Summer 2020: an unconditional waiver of the 80:20 rule;
2. Winter 2020/21: an extension of this waiver of the 80:20 rule, although the following conditions were voluntarily agreed by Airlines for Europe (A4E), the International Air

Transport Association (IATA), Airlines International Representation in Europe (AIRE), Airports Council International (ACI) Europe, and the European Association of Slot Coordinators (EUACA):

- The waiver extension should apply to series of slots held on 31 August 2020 (the Historic Baseline Date).
 - The waiver should not apply to series of slots newly allocated from the pool for the NW20 season. Slots newly allocated from the pool for the NW20 season which an airline does not intend to use should be handed back prior to the Historic Baseline Date.
 - The waiver will not apply to series of slots of an airline that permanently ceases operations at an airport. An airline that ceases operations at an airport must immediately return all the slots allocated to it for the remainder of the season and for the next season (if already allocated) and advise the coordinator whether or not it will use the slots in the future. If an airline fails to provide necessary information on its plans for a certain airport by a reasonable deadline date set by the coordinator, then the coordinator may withdraw and reallocate the slots after having heard the airline concerned.
 - An airline which suspends its operations at an airport should immediately return the slots allocated to it for NW20 to the slot pool for reallocation.
 - Where an airline does not intend to utilise slots, the series or part of a series, should be returned as soon as plans are known to allow reallocation. Where substantial changes to schedules are known, the airline should inform the airport and the coordinator of its intentions as soon as the waiver is granted and update the slots that have been allocated accordingly.
 - Airlines must hand back slots not intended for utilisation as soon as possible, but not later than three weeks prior to planned operation for these slots to be considered as operated in the context of the waiver.
 - Consideration for alleviation should be given to slots that are returned less than three weeks before operation should circumstances be outside the airline's control and related to the crisis. Requests for alleviation on this basis should be submitted to coordinators as promptly as possible for the coordinator to consider.
 - Slots newly allocated and operated as a series may be considered for historic status only if they meet the 80% usage requirement. In the event of newly allocated slots being within the same capacity relevant time/period where the same carrier has been given alleviation against historic slots, that historic status will only be given to newly allocated slots where historic slots from W20 SHL within the same capacity relevant time/period have also met the 80% usage requirement.
3. Summer 2021: an unconditional waiver of the 80:20 rule; however, airlines were encouraged to hand back slots not intended for use as soon as possible to the airport co-ordinator.

Section 12 of the ATMUA Act 2012

Section 12 of the Act inserts a new Article 10aa into Council Regulation 95/93 on common rules for the allocation of slots at UK airports and gives the Secretary of State the power to make provision (for a specified period) for a wider range of alleviation and related enforcement measures. These include:

- requiring co-ordinators to consider slots allocated as having been operated by the carrier to which they were initially allocated subject to any conditions that may be specified;

- modifying Articles 8(2), 10(2), 10(4) and 14(6) of the Regulation to apply as if they contained different percentage figures subject to any conditions that may be specified (in essence a power to amend the 80:20 rule);
- modifying Article 10(4) of the Regulation, the ‘force majeure’ clause, to include additional reasons on the basis of which non-utilisation of slots by an airline can be justified;
- modifying Article 14 of the Regulation to include a power for the co-ordinator to withdraw slots from a carrier for the remainder of the scheduling season where the co-ordinator determines that the carrier has ceased operations at the airport concerned and is no longer able to allocate the slots allocated to it;
- enforcement of any provision under the new Article 10aa and modifying Article 14 of the Regulation and regulations 14 to 19 of the Airports Slot Allocation Regulations 2006 which contains further provisions relating to enforcement;
- modifying any provision of the Regulation relating to allocation of slots to new entrants (including the definition of new entrant);
- modifying any provision of the Regulation relating to co-ordination parameters.

We consider that any changes made should be based on an assessment of the current and likely future situation and should be supported by evidence, based on the latest available data and decided after consultation with industry. We have identified a number of options for future alleviation in this consultation document and we are seeking your views to help inform our decision-making process.

Proposed alleviation for Winter 2021/22

Following the report of the Global Travel Taskforce, restrictions on discretionary international travel are scheduled to be eased starting no earlier than 17 May. Nevertheless, the speed with which the aviation sector will recover from the COVID-19 pandemic, and the extent of that recovery in the medium term, is very uncertain. Even the more optimistic projections indicate that air traffic will remain significantly reduced during Winter 2021/22 compared to prior to the pandemic. Many of the risks identified previously, which have led to the implementation of the previous waivers of the slot usage rule, therefore remain. While available data and forecasts for Winter 2021/22 are limited, we propose the following alleviation in order to support sector recovery and encourage efficient usage of slots during the period:

Vary the ‘use it or lose it’ ratio: We propose to amend the minimum usage ratio from 80:20 to a lower figure. We are provisionally proposing 50:50 meaning airlines are required to use their slots at least 50% of the time to retain their historic rights. We are proposing this ratio because 50% is being recommended by the WASB for Winter 21. We are open to considering an alternative usage ratio, whether higher or lower than 50:50, if it is supported by evidence. If you think that an alternative usage ratio, such as 40:60 or 70:30 would be more appropriate, we would be particularly interested in understanding the evidence that informs your view. The ratio will be finalised following this consultation based on consideration of the views received and the available evidence.

Given the anticipated reduction in demand caused by COVID-19, this would reduce the risk that airlines may operate financially and environmentally damaging ‘ghost flights’ to retain historic rights to their slots, while also encouraging sector recovery.

Full series slot handbacks: We propose to allow carriers, potentially within certain limits, to retain their historic rights over series of slots which they handed back to the coordinator by the IATA hand-back deadline on 31 August so these slot series can be reallocated to carriers seeking to use slots on a temporary or ad hoc basis.

This would encourage airlines to hand back series of slots well in advance of their scheduled operation where they do not intend to operate them. This supports airports in planning their operations, encourages efficient slot use and provides an opportunity for carriers who wish to expand operations in the present season. The percentage carriers can hand back will be finalised following this consultation and consideration of available evidence. We are also considering whether there should be any other limitations on the circumstances in which an airline which hands back a full series of slots before the handback deadline should qualify for historic rights over that series.

Force majeure: Amend the force majeure provision (i.e. justified non-utilisation of slots) to cover certain government measures restricting travel to address the spread of COVID-19 such as short notice travel restrictions, border or airspace closures.

Questionnaire

A series of questions is set out below. **Wherever possible please give reasons or provide evidence to support your answers.** The boxes will expand as you type. You are also welcome to include further views if you wish.

This is a targeted consultation sent to stakeholders identified by the DfT. If you are aware of other industry members who may wish to respond, please forward this consultation on to them.

Your name	Alasdair Adie
Job title (if appropriate)	Head of Regulatory Affairs
Organisation	Airport Coordination Limited
Email address	alasdair.adie@acl-uk.org

CONSULTATION QUESTIONS

The 80:20 slot usage rule was waived for Summer 2021. However, the Air Traffic Management and Unmanned Aircraft (ATMUA) Act 2021 gives greater legal scope to apply alternative alleviation measures if it is considered that there will be a persistent reduction in air traffic compared with an equivalent season before the pandemic. This includes having the ability to adjust the 80:20 slot usage rule ratio.

Given the anticipated reduction in demand, we propose to amend the minimum usage ratio from 80:20 to a lower figure. We are provisionally proposing 50:50 meaning airlines are required to use their slots at least 50% of the time for the air carrier to be entitled to the same series of slots in the next equivalent scheduling period.

50% is provisionally proposed as the usage ratio as it was recommended by the WASB for Winter 21. However, we recognise that due to the uncertainty caused by the COVID-19 pandemic and the associated impacts, other ratios may provide greater or different benefits for the aviation industry. The ratio will be finalised following this consultation and consideration of the available evidence. If you think that an alternative usage ratio, such as 40:60 or 70:30 would be more appropriate, we would be particularly interested in understanding the evidence that informs your view.

Question 1a

Do you think that, in principle, some form of alleviation from the 80:20 slot usage rule will be necessary for the Winter 2021/22 season?

Question 1b

As the aviation sector begins to recover from the impacts of the COVID-19 pandemic, do you think that the minimum usage ratio should be changed from 80:20 for Winter 2021/22?

- Do you agree that 50:50 is an appropriate slot usage ratio for Winter 2021/22?
- If not 50:50, what do you think would be the appropriate minimum usage ratio for Winter 2021/22, and why?
- Do you think any conditions should be attached to a new usage ratio for Winter 2021/22?

Question 1c

If a lower usage ratio is implemented for Winter 2021/22, should any of the following be excluded? Please set out your reasons for this.

- i) Newly allocated slots
- ii) Traded and leased slots
- iii) Slots held by carriers that, after the start of the season, give notification that they have ceased operations at an airport, or intend to do so before start of the following year's equivalent season (please specify how this should be defined and why)
- iv) Slots not handed back within a certain handback period (please specify how long that handback period should be and why)

ACL Response:

Q1a – Some form of alleviation would appear to be necessary for Winter 2021, given the likely continued impact of Covid-19 on the industry. The latest traffic scenario forecasts from Eurocontrol (issued 1 June) for Europe, for example, shows a baseline scenario of traffic reaching 70% of 2019 levels by the end of 2021 (<https://www.eurocontrol.int/press-release/updated-eurocontrol-traffic-scenarios-2021-clear-hope-some-recovery-summer-and-beyond>). The final decision should be based upon independent demand forecast for the Winter 2021 season and evidence on the likely level of restrictions and the frequency of change for W21.

The current waiver in place for S21 is biased towards the needs of incumbent carriers and (whilst their needs remain important) does not balance the needs of airports or new entrants (the protection of which is also critical to the recovery of the aviation sector).

Whilst we recognise there is no perfect solution, it is important to adopt a mechanism that provides a more balanced approach and one that is drafted in such a way as to ensure the underlying objectives are achieved and that it can be practically applied by the coordinator.

Q1b –

The usage ratio

Key to encouraging use of slots, better balancing the needs of incumbents, airports and new entrants and to correcting some of the deficiencies created by current mechanisms is to set a meaningful usage ratio which carriers are held to.

An enforceable usage ratio is a more effective way to address the issue of carriers ceasing operations at an airport, than attempting to give the coordinator the power to withdraw slots.

Slots retained should be operated and those not operated should be returned to the pool for reallocation by the coordinator. New entrants who are willing and able to fly and provide consumers choice and generate revenue for the airport should be encouraged. Generally, new entrants will be less willing to invest in and commit to starting new operations at an airport where they are unable to get historic rights for the slots they wish to utilise.

Given Government's proposed amendment of Article 10(4) and its proposal for full alleviation on series returned at season start (which allows carriers to judge demand on green, amber and red listed routes), it could be argued that the usage ratio on slots retained should be much closer to, or remain at, 80/20. Those two proposals should provide the necessary level of relief for carriers (and help incentivise carrier behaviours against ghost flying) without the need to have a lower usage ratio (thereby better balancing the needs of incumbents, airports and new entrants).

There is a balance to be struck on the actual usage ratio selected. Retaining a ratio closer to 80/20 could encourage airlines to operate services or risk losing the historic entitlement, but it could also encourage the mass-return of series at season start, with carriers immediately applying for the same slots on an ad-hoc basis. A higher rate of utilisation places the focus on justified non-use provisions as airlines seek to retain slots so the wording of an amended Article 10(4) becomes more critical.

Given the volatility of demand and the risk of last-minute change (for example on the green listed routes), we recommend a usage requirement of 70% on slots retained. That is in line with the higher end of the latest traffic scenario forecasts from Eurocontrol but still gives carriers a 10% margin on top of the force majeure provisions and the ability to get full

alleviation on series returned.

Critical to the effectiveness of the usage ratio will be the drafting of any force majeure provisions in the amended Article 10(4). The key being that the usage ratio is able to be applied and not completely circumvented by the force majeure provisions. As we are seeing in Europe currently, the justified non-use wording adopted by the EU Commission in the EU Slot Regulation is so wide that Europe effectively has a full waiver, which is not what was intended.

Conditions attached to the usage ratio

We recommend inclusion of the same conditions as proposed in the current WASB proposal, namely (paragraph references are to those in the WASB proposal):

2.1.5. Airlines must hand back slots not intended for utilization as soon as possible, but not later than four weeks prior to planned operation. Retiming and repurposing of slots within the four-week period is allowed.

2.1.6. Series operated as approved on a non-historic basis in NW21 should have priority over new demand for the same timings in the next equivalent season subject to capacity and any other legal conditions.

Q1c –

In terms of newly allocated slots and traded slots, the general principle should be that no carrier should be able to grow its slot portfolio whilst benefitting from alleviation. For details on how ACL currently treats newly allocated slots, see our guidance https://www.acl-uk.org/wp-content/uploads/2021/06/Guidance-on-conditional-offers-for-slots-without-prior-hist-precedence_V5.pdf

The blocking of slots by carriers who have ceased operations at an airport is problematic and perhaps an unintended consequence of the current S21 waiver. At some airports, this behaviour is blocking new entrants from starting new operations and so does not encourage competition nor does it support the most efficient use of capacity.

Whilst the proposal to allow the coordinator to withdraw slots is one way of dealing with this, the drafting and effective implementation of that mechanism would be extremely challenging in practice. However good the drafting is, we have low confidence that the coordinator would be able to effectively enforce it.

This is an issue created by alleviation and so is not a long-term problem (as it goes away when normal UIOLI rules return). As such, our view is that the more effective way to address this issue would be to ensure that a meaningful usage ratio is applied (even if below 80/20) and is not circumvented by the force majeure provisions in an amended Article 10(4).

As stated in our response to question 1b, we support inclusion of a condition that slots not handed back within 4 weeks of operation should not benefit from alleviation.

The WASB's proposal for Summer 21 recommended that airlines which return a full series of slots by the hand-back deadline should be permitted to retain their rights to operate those slots the following summer. The UK currently has not adopted this rule. However, we

understand that in countries which have, it has encouraged airlines to return slots to the pool for reallocation.

Question 2a

To encourage efficient slots usage, should carriers be given the opportunity to hand back slot series by 31 August in order to retain historic rights for the season?

Question 2b

Should any of the following be excluded from full series handback? Please set out your reasons for this.

- i) Newly allocated slots
- ii) Traded and leased slots
- iii) Slots held by carriers that have ceased operations at an airport (please specify how this should be defined and why)

Should there be any other limitations on the circumstances in which an airline which hands back a full series of slots before the handback deadline should qualify for historic rights over that series?

Question 2c

Do you think that the number of slots which can be handed back should be limited? What do you think the appropriate percentage of slots carriers are allowed to hand back should be?

ACL Response:

Q2a – If: (i) a meaningful and enforceable usage ratio is set at the higher end of the latest traffic scenario forecasts from Eurocontrol; and (ii) a limit is placed on the number of series able to be returned at season start, we support inclusion of the proposed mechanism allowing for full alleviation over full series returned. By a meaningful and enforceable usage ratio, we mean one that is not circumvented by the force majeure provisions under a revised Article 10(4).

Allowing full alleviation over series returned supports a market-by-market led recovery by allowing carriers to assess expected demand, and to make adjustments based on their assessment of demand on green, amber and red routes.

The deadline for return of series should be 31 August, which is the defined HBD in the Slot Regulations. That means the new Si will need to be in force well before then.

Q2b –

In terms of newly allocated slots and traded slots, the general principle should be that no carrier should be able to grow its slot portfolio whilst benefitting from alleviation.

Slots exchanged by way of artificial exchange should be excluded from alleviation and subject to the normal 80/20 usage ratio.

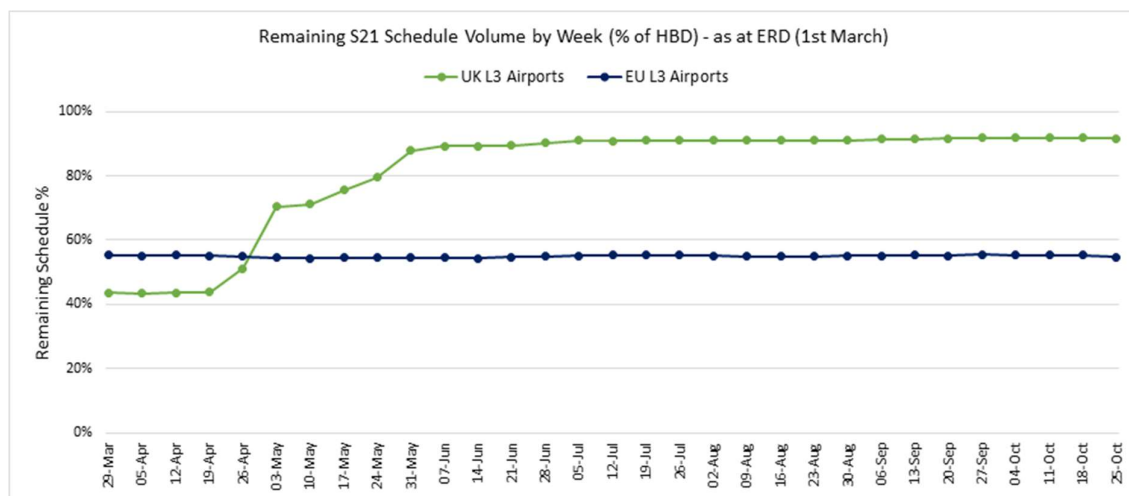
Slots held by carriers who have ceased operations at an airport should be returned to the pool for re-allocation by the coordinator. As stated in our response to question 1c above, the more effective way to solve this would be to ensure a meaningful usage ratio applies

and is not circumvented by any force majeure provisions.

Q2c –

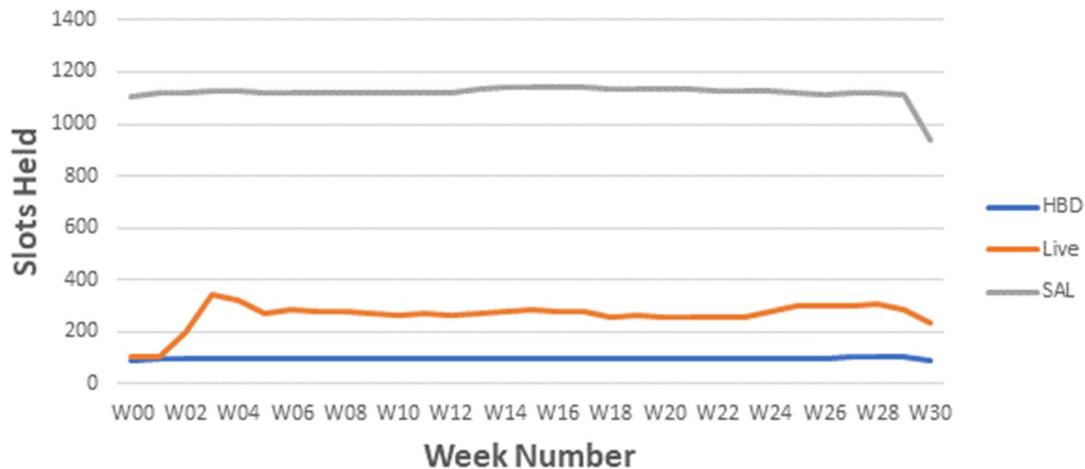
We recommend placing a limit of 50% of total series held on the number of full series that can be returned at season start (and over which full alleviation can be claimed). Carriers should now be encouraged, as far as possible, to operate slots retained. In addition, such a limit is critical to discouraging slot dumping at the start of a season and encourages carriers to put more thought into what slots are returned and which are retained for operation. Thereby encouraging a market-by-market led recovery and better balancing the needs of incumbents against those of airports and new entrants. Even where carriers cannot return full series, they would be able to get alleviation through the proposed amendment to Article 10(4) to cover foreseeable Government travel restrictions and via a lower usage ratio.

A 50% limit on series returned is currently in force in Europe for S21. The following graph shows the impact of a 50% handback option at HBD (ERD in this case). For the airports in Europe which ACL coordinates (Dublin and Warsaw) around 45% of all slots held across the season were handed back. Feedback we have received from other European coordinators suggests a similar pattern for other EU airports. This demonstrates that, even though 50% handback was an option, carriers actually handed back less than 50%.



For an example of an airport outside of Europe, Auckland airport put in place a similar mechanism, based on the WASB proposal and without any limit on the number of series that could be handed back at season start. This mechanism led to a significant reduction in slots held at HBD at Auckland airport as airlines sought to benefit from the available full alleviation (see chart below). Airlines did resubmit for slots after HBD but for the services that they planned to operate, rather than holding onto slots and returning them throughout the season. This resulted in better airport planning and improved ACL's ability to reduce the schedule when the Trans-Tasman bubble opened.

Slots Held by Week at Auckland International Airport in NS21 at SAL, HBD and the Live Schedule as as 31 March (Start of Season)



Currently, Article 10(4) of the Slots Regulation provides an exception to the 80:20 slot usage rule where non-utilisation of the relevant slots can be justified on the basis of any of the listed reasons (referred to here as “force majeure”), but these reasons do not currently include COVID-19 related restrictions on travel. Feedback from the Summer 2021 consultation suggested that, to ensure air carriers are not unfairly penalised for failure to use slots due to COVID-19, Article 10(4) should be expanded to include reasons arising from the pandemic.

We propose to amend Article 10(4) for Winter 2021 to include measures addressing the spread of COVID-19. An example of this is set out in Article 10(4)(e) of the version of the Regulation which applies in the EU (following amendments made there on 16 February 2021 by Regulation EU 2021/250) although we would have freedom to draft our own definition in light of industry feedback.

It is our initial view that any updated definition of Article 10(4) should be tightly and clearly defined to give the aviation industry as much certainty as possible and to cover only genuinely unforeseeable new government travel restrictions related to COVID-19. We would be particularly interested in in views you may have on how this might be best defined to achieve this aim.

Question 3a

Do you think that the list of reasons for non-utilisation in Article 10(4) should be expanded to include government measures intended to address COVID-19 that restrict the ability to travel such as travel restrictions, border or airspace closures?

Question 3b

Do you think this should apply only to restrictions that were announced after the handback deadline?

Question 3c

What types of restrictions do you think should, or should not, be included? Should this be limited to legal provisions prohibiting travel, or should it include government advice warning against any non-essential travel to a particular country or territory?

Question 3d

What, if anything, should an airline be required to demonstrate in order to rely on such restrictions as a reason to justify non-utilisation of slots?

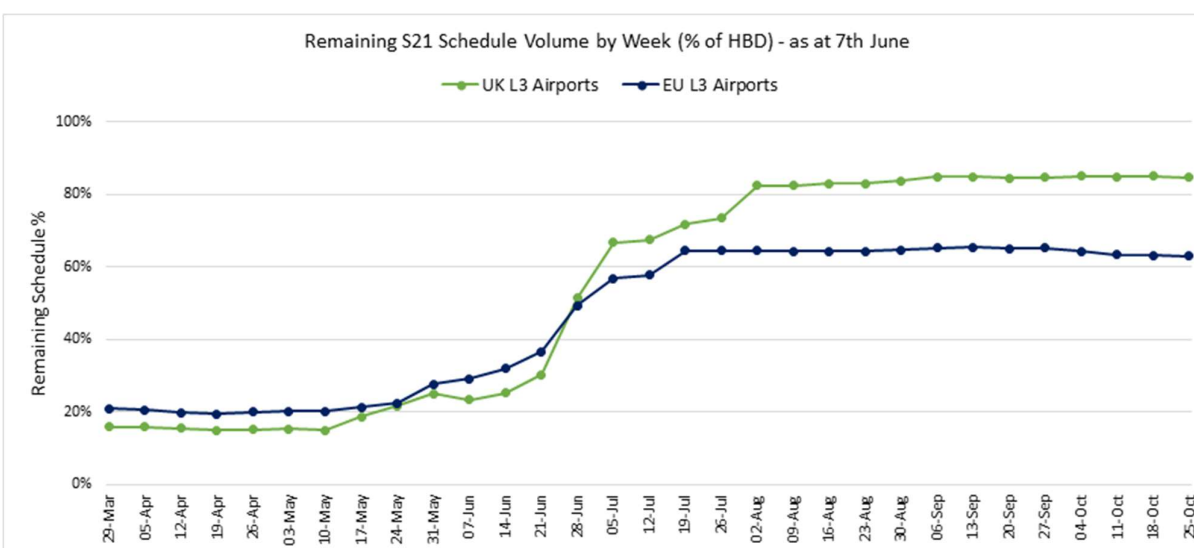
Question 3e

The WASB encouraged coordinators in Summer 21 to continue to grant alleviation during a recovery period of up to six weeks after relevant restrictions had ended. Should any additional reasons justifying non-utilisation of slots continue to apply during a buffer or recovery period following the ending of any relevant restrictions? How long do you think this recovery period should be?

ACL Response:

Q3a – We support the expansion of Article 10(4) of the UK Slot Regulation to include Government measures intended to address Covid-19 and which restrict the ability to travel. We do not support any extension of Article 10(4) which goes wider than that.

The justified non-use criteria currently in force in Europe for S21 is too wide and, combined with the 6 week ramp up allowance, means that in Europe we currently have full alleviation, despite the 50% usage requirement. The graph below illustrates this point and shows how Europe started to mirror the situation in the UK as the wide justified non-use provisions and 6 week ramp up provisions in place in Europe circumvented the 50% usage requirement.



If the UK amends Article 10(4), we support wording more like that used in the section 3 of

the current WASB proposal.

We agree with the point that any wording in Article 10(4) should be carefully, tightly and clearly defined. To achieve the objectives behind alleviation (and any meaningful usage ratio), the force majeure provisions must be limited in scope and limited to last minute changes made by Government which were not foreseeable. That is reasonable given carriers will have the ability to make judgements based on expected demand and known restrictions when deciding which series to return at season start for full alleviation.

Q3b - The force majeure provisions should only apply to Government restrictions which were not known (or reasonably foreseen) prior to the HBD i.e. article 10(4) should only cover restrictions which are last minute and unexpected.

Q3c and 3d – We support the amendment proposed by the addition of a new Article 10(4)(e), based on section 3 of the current WASB proposal (our amendments/additions to the WASB text are shown in red below):

“10(4)(e) **interruption of air services due to Government imposed restrictions related to Covid-19 which are unforeseeable, unavoidable and outside the air carrier’s control and arising from:**

- (i) Severe government restrictions related to COVID-19 on the maximum number of arriving or departing passengers on a specific flight or through a specific airport;
- (ii) Government **imposed lock-downs or severe** restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is;

N.B – for (ii) we would suggest Government should clearly define what is meant by “severe restrictions” so (for example) to exclude current restrictions around travel to amber listed countries which, in our view, should not justify alleviation.

- (iii) Government-imposed closure of businesses essential to support aviation activities (e.g. closure of **all hotels within the vicinity of the airport or destination, closure of all catering or ground handling businesses at the airport**);

~~(iv) Unforeseeable restrictions on airline crew, including sudden bans on entry or crew stranded in unexpected locations due to quarantine measures. [N.B – we do not see a need for this provision as it is covered by (i) above]~~

Q3e - We question whether inclusion of wording similar to section 3.4 of the current WASB proposal (encouraging Coordinators to grant alleviation during a recovery period of up to 6 weeks following the ending of any relevant restrictions) is really necessary. Whilst ACL has applied similar provision for Article 10(4) alleviation outside of Covid in the past (e.g. in relation to aircraft fleet groundings), it seems unnecessary for Covid-19 type restrictions as current experience suggests that demand flows back quickly when travel restrictions are lifted.

In addition to the proposals for Winter 2021/22 set out above, we have considered other options which are described below. If you believe that any of these should be included in a Winter 2021/22 alleviation instead or in addition to the measures above, please provide evidence supporting your view.

Due to the effects of the COVID-19 pandemic on public health and air travel, the 80:20 slot usage rule was waived for Summer 2021 season to allow the aviation sector to mitigate

against the impacts of the pandemic and encourage recovery.

Question 4a

Following the implementation of successive waivers since Summer 2020, as an alternative to the approach set out above, do you think that a full waiver of the 80:20 rule should continue to be applied in the Winter 2021/22 season?

Question 4b

If a full waiver was implemented for Winter 2021/22, should any of the following be excluded from a full waiver? Please set out your reasons for this.

- i) Newly allocated slots
- ii) Traded and leased slots
- iii) Slots owned by carriers that have ceased operations at an airport (please specify how this should be defined and why)
- iv) Slots not handed back within a certain handback period (please specify how long that handback period should be and why)

ACL Response:

Q4a and 4b – We do not support a full waiver for W21 or beyond. A full waiver has been given for the last three seasons and it is now time for the UK to implement a mechanism which better balances the needs of incumbents, new entrants and airports, and which encourages a return to flying and to normal UIOLI rules.

A full waiver is, in our view, unfairly biased to incumbent carriers. Whilst their needs are important to the recovery of our industry, they are not the only important stakeholders. A full waiver does not encourage early return of slots, does not support the recovery of airports and does not support new entrants or competition in the market.

Currently 50% of slots in the slot pool are assigned to new entrants as defined in Article 2 of the Slots Regulation. In order to increase the number of air carriers covered by the new entrant rule and allow carriers to establish and expand their operations, we are considering redefining the new entrant rule as part of the alleviation measures. For Summer 21, the European Union changed their definition of a new entrant to include carriers which, if granted the slots in question, would hold fewer than seven slots at an airport on a day (rather than 5 as previously), provided they and other companies in the same group do not hold more than 10% of the slots at that airport that day (rather than the previous 5% limit for the carrier itself).

Question 5a

Should we broaden the new entrant rule to include carriers which, if their slot request is accepted, would hold fewer than seven slots at that airport on that day, provided they and other companies in their group do not hold more than 10% of the slots?

Question 5b

Alternatively, would you favour broadening the new entrant rule in some other way (and why)?

ACL Response:

Q5a& 5b – Now is not the time to be looking at the NE rule; a full review of which would perhaps be better left to the wider slot policy review towards the end of this year.

Better to addressing the needs of new entrants in the current crisis would be ensuring a meaningful and enforceable usage ratio applies.

Question 6a

Do you think the slot coordinator would benefit from additional enforcement powers in relation to the proposed alleviations? For example, issuing directions, imposing penalties or to provide for the withdrawal of the benefit of the alleviation for failure to comply with any condition which might be imposed.

Question 6b

What do you think penalties should be if enforcement were needed?

Question 6c

Do you think ACL should be given a power (as set out in the new Article 10aa.4(d) inserted by the Air Traffic Management and Unmanned Aircraft Act 2021 to withdraw slots from an air carrier for the remainder of the Winter 2021/22 scheduling period where the coordinator determines that the air carrier has ceased its operations at the airport concerned and is no longer able to operate the slots allocated to it?

ACL Response:

Q6a and 6b – If the legislation putting the alleviation mechanism in place is drafted so it is clear in what circumstances alleviation is and is not available, there should be no need for additional powers for the coordinator. If carriers follow the conditions correctly, then they will get alleviation, if they do not, they will not get alleviation. So, we would suggest in that scenario, there is no need for additional penalties.

Q6c – The blocking of slots by carriers who have ceased operations at an airport is problematic and perhaps an unintended consequence of the current S21 waiver. At some airports, this behaviour is blocking new entrants from starting operations and so does not encourage competition nor does it support the most efficient use of capacity.

Whilst the proposal to allow the coordinator to withdraw slots is one way of dealing with this, the drafting and effective implementation of that mechanism would be extremely

challenging in practice. However good the drafting is, we have low confidence that the coordinator would be able to effectively enforce it.

This is an issue created by alleviation and so is not a long-term problem (as it goes away when normal UIOLI rules return). As such, our view is that the more effective way to address this issue would be to ensure that a meaningful usage ratio is applied (even if below 80/20) and is not circumvented by any revised force majeure provisions in Article 10(4).

Question 7

Do you foresee any adverse effects on competition from any of the changes proposed above for Winter 2021/22 in questions 1-3 (or if we were to take any of the other measures which are not currently proposed, as set out above)?

Response:

No further comment.

Question 8

Having reviewed our proposal for Winter 2021/22 alleviation, is there anything included that you think should be changed? Are there any measures that you think it would benefit from including that it currently does not? If you have a different proposal, please could you provide the rationale or evidence behind it?

Response:

No further comment.

Submitting your consultation response

Please send your completed consultation response form by email – entitled ‘Slot alleviation conditions for Winter 2021/22 – consultation’ – **no later than 11.45pm on Monday 21 June** to: SlotConsultation@df.gov.uk

Alternatively, you can send your completed response by post to the following address. Please notify us by email that you intend to respond by post, where possible.

Slot Waiver Consultation
Airports, Infrastructure and Commercial Directorate
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

Please note that we will not be able to consider consultation responses received after [xxx] 2021.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Privacy Notice

Confidentiality and data protection

The Department for Transport (DfT) is running this consultation to gather industry views on any conditions to be attached to a possible extension of the current 80:20 slot usage rule waiver.

In this consultation we're asking:

- for your name and email address, in case we need to ask you follow-up questions about your responses (you do not have to give us this personal information, but if you do provide it, we will use it only for the purpose of asking follow-up questions).

Your consultation response and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. Any information you provide that allows individual people to be identified, including yourself, will be protected by data protection law and DfT will be the controller for this information.

Your personal data will not be shared with any other third parties, even those employed for the purpose of analysis. [DfT's privacy policy](#) has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer.

We will not use your name or other personal details that could identify you when we report the results of the consultation.

Your information will be kept securely and destroyed within 9 months after the closing date.

Consultation Principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

May 2021