

ANNEX B

PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposed measure:

Introduction of a sanctioning mechanism for the misuse of slots which is required by EC Regulation 95/93 as amended by 793/2004

2. Purpose and intended effect

i) Objectives:

The overall objective of the European Regulation 95/93 as amended by 793/2004 is to ensure that where airport capacity is scarce, the available capacity is used efficiently and distributed in a fair, non-discriminatory and transparent way. Enforcement measures and sanctions have been introduced with the aim of discouraging the misuse of slots, thereby maximising the effectiveness of the slot allocation system.

ii) Background

Airport slots at congested airports must be managed for reasons of safety and efficient throughput. The rules governing slot allocation are set out in EC Regulation 95/93 as amended by 793/2004. Under this legislation a Member State may designate an airport as "Co-ordinated". This means that airlines must be allocated take off and landing slots in order to operate. Holding a slot means that airspace, runway space, aircraft parking space and terminal capacity for the passengers are available. Currently Gatwick, Heathrow, Manchester and Stansted are so designated. At Co-ordinated airports the Member State must appoint an independent Co-ordinator responsible for allocating slots. In the UK this is done by Airports Co-ordination Limited (ACL).

The criteria for allocating slots derive from EC law, International Air Transport Association (IATA) guidelines and, at some airports, local rules. The most significant criterion is "historic precedence" (sometimes called "grandfather rights" set out in Article 8 of the amended Regulation 95/93) which entitles an airline to continue using the same slot in the next season, provided it has utilised it for at least 80% of the previous one ("Use-it-or-Lose-it Rule"). Remaining slots are pooled. First claim on up to 50% of pool slots goes to "new entrants", as defined under the regulation.

To address the pressing issue of more efficient use of airport capacity, the Commission has confirmed that a new regulatory framework for slot allocation is called for and that to achieve this it would pursue a two phase approach to revise Council Regulation (EEC) 95/93. Phase 1 was completed by the adoption of the amendments in Regulation (EC) 793/2004. Phase two is currently underway and we expect a further proposal from the Commission early next year.

Regulation 793/2004 entered into force on 30 July 2004 except for Articles 11(2) and 14(5) which enter into force on 30 July 2005. Article 11(2) relates to protecting the co-ordinator from claims for damages; Article 14(5) relates to the implementation of effective, proportionate and dissuasive sanctions to deal with repeated and

intentional misuse of slots, in order to encourage greater compliance with the Regulation.

iii) Rationale for Government intervention

The driver for action is the EU Regulation, which obligates the Member State to bring forward measures to apply sanctions to airlines misusing their slots. There is no sanctioning system currently in place. Government needs to intervene because only it can update the statutory instrument which helps implement the European legislation in UK law.

Given the constrained nature of the UK's airports, especially Heathrow and Gatwick, the Government believes that it is important to make best use of the available capacity and to minimise the level of congestion and delays which affect all carriers. This means making optimum use of slots, and therefore addressing misuse of slots by airlines, even where this amounts to a very small proportion of total slot operations.

3. Consultation

In line with Cabinet Office guidance, a 12 week consultation on this issue is being undertaken. The consultation closes on 7 October. This formal consultation stage follows on from a phase of informal consultation to develop this policy and consultation document with other Government Departments; external bodies including CAA, OFT and aviation stakeholders including major UK airlines and airport operators.

4. Options

1. **Do nothing** - ignore Article 14.5 of Regulation 793/2004 and do not introduce a system of sanctions to tackle misuse of slots.
2. Support a system of administrative sanctions to complement those that already exist at some airports in the form of local rules.
3. Introduce a combination of administrative and financial sanctions
4. Go beyond the scope of Article 14.5 of the Regulation and introduce sanctions to tackle all slot misuse in a wider context i.e. not just where it is "repeated and intentional."

5. Costs and Benefits

Sectors and groups affected

The aviation industry, primarily airlines operating at the UK's coordinated airports (Heathrow, Gatwick, Stansted and Manchester), and the operators of those airports would be affected by this policy. Consumers and citizens more generally should not be directly affected, nor should there be any impact on voluntary organisations and charities. This policy proposal will not have any race equality impacts.

Analysis of costs and benefits

Option 1 - The benefits of doing nothing are that there would be no implementation costs or additional regulatory burdens. It would limit the concerns of the airline industry about over-regulation by Government, and fears of retaliatory action by other countries. In terms of costs, this option contravenes EU legislation and therefore could lead to infraction proceedings by the Commission. It also means the misuse of slots at co-ordinated airports may continue to be a problem, imposing costs on airport operators and other airlines affected, as there is no mechanism to enforce compliance beyond the local rules in place at Gatwick and Manchester airports.

Option 2 - the benefits of option 2 are that at some airports such local rules are already in place so there are some best practice examples to learn from. It avoids the use of financial penalties which may be more unpopular with airlines and potentially more likely to spark retaliatory action. The disbenefits are that there is a lack of evidence as to the effectiveness of such local rules so there may not be much improvement in performance. There would be a resource and financial cost in terms of implementing and monitoring a sanctioning system and an appropriate appeal process.

Option 3 - the benefits of option 3 are that a system which offers a wide choice of sanction also enables the penalty imposed to be proportionate to the severity of the misuse identified. Enabling recourse to financial sanctions will provide more leverage to address slot misuse and should therefore be more successful in changing airline's behaviour. As pressure on slots increases the benefits of being able to impose these sanctions will become more evident and the need for them more pressing. Making the airlines pay the "price" of their infringement should influence their behaviour in a positive way. The costs are that it places a further regulatory burden on the administrator of the system in terms of collecting, handling and accounting for the money from fines. There would be a resource and financial cost in terms of implementing and monitoring a sanctioning system and an appropriate appeal process. The use of financial penalties may be more unpopular with airlines as it could potentially affect their profitability, and is potentially more likely to spark retaliatory action by other countries who might respond to sanctions on their airlines with action against UK airlines.

Option 4 - the benefits of this option are that it potentially provides the best outcome in terms of addressing the general problem of slot misuse and therefore the most effective use of airport capacity. Other benefits are the same as for option 3. The costs are that this option would be seen as "gold-plating" the Regulation or even potentially going beyond the legal framework provided by Article 14.5, thereby increasing the likelihood of judicial review or challenge by the Commission. This option would also punish airlines whose behaviour may not be "repeated and intentional".

6. Small firms' impact test

We do not believe this policy is likely to have a significant impact on small businesses. The financial sanctions are intended to be dissuasive to influence an improvement in the behaviour of a minority of airlines which misuse their slots. This should be beneficial to the efficiency of the slot allocation system as a whole.

7. Competition assessment

The affected market is the aviation sector. As the amendments are largely technical in nature we do not expect them to make a significant difference to competition in this sector. The amendments should not affect the market share of any firm in this sector, should not affect the market structure, lead to higher set-up costs or ongoing costs for new entrants or restrict the ability of firms to choose the price, quality, range or location of their products.

Generally the enforcement measures in the new Regulation should ensure greater levels of EU-wide compliance with the requirements of the coordinator and the slot Regulation which should improve the effectiveness of the slot allocation system, and therefore encourage competition.

8. Environmental Impacts

It is unlikely that the introduction of an effective sanctioning mechanism to address slot misuse, will impact significantly on either carbon dioxide or NO₂ emissions. However, if the sanctions improve slot use there should be positive impact on airport operations and in reducing delays. It is therefore reasonable to assume that carriers will spend less time waiting in queues to be taxied onto the runway and in the air waiting to land which should reduce the amount of fuel used by the carriers. Any impact on emissions should therefore be positive.

9. Enforcement and sanctions, monitoring and review

The Regulation foresees the introduction of dissuasive sanctions, which may be financial or non-financial, for those guilty of committing an offence under the new Regulation. This consultation aims to determine the type of sanctions to be imposed and under what circumstances this would be appropriate. The system could either be administered and enforced by airport operators at the first instance through the slot performance monitoring committees (SPCs), or by the coordinator (ACL) with recourse to an appropriate appeals body, or the UK Courts system by way of Judicial review. Compliance with the sanctioning process will be monitored by the airport operator and / or ACL.

10. Preliminary implementation and delivery plan

	Option 2	Option 3	Option 4
Ownership	DfT will empower either the co-ordinator or airport operator to implement sanctions	DfT will empower either the co-ordinator or airport operator to implement sanctions	DfT will empower either the co-ordinator or airport operator to implement sanctions
Aims of implementation	The aim is to use administrative sanctions to tackle repeated and intentional misuse of slots in order to maximise the effectiveness of the slot allocation system and slot usage.	The aim is to use a range of sanctions including financial if appropriate to tackle repeated and intentional misuse of slots in order to maximise the effectiveness of the slot allocation system.	The aim is to use a range of sanctions including financial if appropriate to tackle all types of misuse of inefficient use of slots in order to maximise the effectiveness of the slot allocation system and slot usage.

Timetable for implementation	The S.I takes effect 21 days after being laid before Parliament. We expect the responsible body to implement an appropriate system as soon as possible after that.	The S.I takes effect 21 days after being laid before Parliament. We expect the responsible body to implement an appropriate system as soon as possible after that.	The S.I takes effect 21 days after being laid before Parliament. We expect the responsible body to implement an appropriate system as soon as possible after that.
Identification of stakeholders	Stakeholders include the airlines operating from the coordinated airports, the coordinator and the airport operators.	Stakeholders include the airlines operating from the coordinated airports, the coordinator and the airport operators.	Stakeholders include the airlines operating from the coordinated airports, the coordinator and the airport operators.
Communication strategy	DfT will write to all consultees once the S.I comes into force. It will be for the administrator of the system to provide operational guidance to stakeholders.	DfT will write to all consultees once the S.I comes into force. It will be for the administrator of the system to provide operational guidance to stakeholders.	DfT will write to all consultees once the S.I comes into force. It will be for the administrator of the system to provide operational guidance to stakeholders.
Risk analysis	Lower level administrative sanctions may not be taken seriously by airlines while higher level measures such as confiscation of slots could lead to legal challenge by airlines.	Financial sanctions would be unpopular with airlines (who could pass the costs onto passengers), difficult to collect and enforce and could lead to legal challenge by airlines.	A wider sanctioning system could be seen as "gold plating" the Regulation and that the Commission might view it as going beyond what the Regulation requires.
Enforcement and monitoring	The system would be enforced and monitored by either the relevant airport operator in the first instance through the SPC, or by the coordinator (ACL) with recourse to an appropriate appeals body.	The system would be enforced and monitored by either the relevant airport operator in the first instance through the SPC, or by the coordinator (ACL) with recourse to an appropriate appeals body	The system would be enforced and monitored by either the relevant airport operators at the first instance through the SPC, or by the coordinator (ACL) with recourse to an appropriate appeals body
Existing initiatives	Obligating the Member state to put in place sanctions is a new initiative of Regulation 95/93 as amended by 793. Some local initiatives to improve slot efficiency are in place at Gatwick and Manchester airports.	Obligating the Member state to put in place sanctions is a new initiative of Regulation 95/93 as amended by 793. Some local initiatives to improve slot efficiency are in place at Gatwick and Manchester airports.	Obligating the Member state to put in place sanctions is a new initiative of Regulation 95/93 as amended by 793. Some local initiatives to improve slot efficiency are in place at Gatwick and Manchester airports.

11. Conclusion

All representations to the consultation will be carefully considered before the text to amend the Statutory Instrument is drafted. Consultees will be kept informed of progress.

CONTACT POINT

Ms Athalie Allen
Airports Policy Division
Department for Transport
Zone 1/26
Great Minster House
76 Marsham Street
London SW1P 4DR

Tel: 020 7944 5909
Fax: 020 7944 2191
E-mail: athalie.allen@dft.gsi.gov.uk