

CONSULTATION ON THE INTRODUCTION OF A SANCTIONING MECHANISM FOR MISUSE OF SLOTS IN LINE WITH EC REGULATION 95/93 AS AMENDED BY 793/2004

INTRODUCTION

Within the EU, slot allocation is governed by **EC Regulation 95/93** (as amended by **Regulation 793/2004**). The majority of the amendments contained in Regulation 793/2004 came into force on 30th July 2004, although some of its provisions do not take effect until July 2005. Regulation 95/93 is supplemented for the purposes of its implementation in UK law by **Statutory Instrument 1993/1067** and we now need to update the Statutory Instrument to facilitate implementation of the changes effected by Regulation 793/2004.

Most of the amendments in the new Regulation are minor or very technical and we do not believe they require consultation. However there is one particular measure in Regulation 793/2004 (**Article 14.5**), that we consider may have a potentially more significant impact and therefore we are seeking the views of the aviation industry on it before making amendments to the Statutory Instrument. **Article 14.5 of Regulation 793/2004 places an obligation on Member States to put in place, in the circumstances specified, sanctions to deal with repeated and intentional misuse of slots by airlines.** The full text of this article is set out below.

The Statutory Instrument in its entirety will be updated following the close of the consultation. Where changes were considered to require consultation, the responses received will be taken fully into account to ensure that amendments to the Regulation can be implemented effectively.

In order to inform debate a partial Regulatory Impact Assessment (**RIA**) is attached at Annex B. An RIA is an assessment of the impact of policy options in terms of costs, benefits and risks of a proposal. At this stage the RIA is only partial and invites suggestions and data, which will assist policy decisions following the consultation. Respondents are encouraged to consider both documents before responding to this consultation. A copy of the existing Statutory Instrument 1993/1067 can be found at Annex D for information. A copy of the combined text of Regulation 95/93 as amended by 793/2004 can be found at Annex E.

A list of consultees is included in Annex F. If you have any suggestions of others who may wish to be involved in the consultation process please let us know.

This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" which are included Annex A.

A summary of the consultation responses will be published on the DfT website after the consultation period ends.

The Freedom of Information Act 2000 requires public authorities to disclose information they hold if it is requested. This includes information contained in responses to consultations. The department will generally publish subsequently the information it discloses under FOI on its website. If you ask for your response to be

kept confidential this will only be possible if it is consistent with the Department's obligations under the Freedom of Information Act.

BACKGROUND

European policy context

The Commission's 2001 Transport White Paper recognised that reform of the slot allocation Regulation was required to ensure the most efficient use of scarce capacity at congested European airports. They proposed that this would be undertaken in two phases. The first stage revision was aimed at improving 'technical' aspects of the existing Regulation to ensure better enforcement and greater opportunities for 'new entrants' and came into force on 30 July 2004. The Commission have begun the second phase by consulting on various options relating to the introduction of market mechanisms for slot allocation outlined in the NERA report. We expect them to produce a Communication in the autumn and a formal proposal to revise the Regulation early in 2006.

Regulatory framework

The measure we are consulting on applies only to those airports in the UK that are designated as "**Coordinated**" under the Regulation (previously known as "fully coordinated"). A coordinated airport is one where in order to land or take off, it is necessary to have been allocated a slot by the coordinator. **Airport Coordination Limited (ACL)** is the designated Coordinator at the four coordinated airports in the UK - **Heathrow, Gatwick, Stansted and Manchester**.

At each coordinated airport in the UK, there is a **Coordination Committee** whose primary responsibilities include advising the coordinator on a range of scheduling issues including how best to use the capacity at the airport, and to provide a mediation service where complaints are made on the allocation of slots. Membership of each Committee is open to air carriers, their representative organisations, the managing body of the airport, NATS and representatives of general aviation. There also exists a sub-group of this committee called the **Slot Performance Committee** which monitors slot performance and has the same representative membership.

OBJECTIVE OF THE CONSULTATION

To gather views from stakeholders on how the UK Government could most effectively implement Article 14.5 of Regulation 793/2004 which states

"Member States shall ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional operation of air services at times significantly different from the allocated slots or with the use of slots in a significantly different way from that indicated at the time of allocation, where this causes prejudice to airport or air traffic operations."

CONSULTATION QUESTIONS

1. Is there a need to address slot misuse at the UK's coordinated airports?

To enable better understanding of whether there is a need to address slot misuse and what types of misuse occur, ACL has identified the most widely recognised types of abuse in the coordination system. Each type has a varying degree of impact. Some of these types of abuse do not fall within the scope of Article 14.5 of Regulation 793/2004 and we are not suggesting they be tackled as part of this sanctioning system, but they are included here to provide an overview of the problems that can occur:

- Failure to operate an allocated slot (waste of scarce airport resources)
- Operating without an allocated slot (potentially causes prejudice to airport operations)
- The use of slots in a significantly different way from that indicated at the time of allocation e.g. operating with a larger aircraft than the slot allocated (potentially causes prejudice to airport operations)
- Operation of air services at times significantly different from the allocated slots intentionally (potentially causes prejudice to airport operations)
- Operation of air services at times significantly different from the allocated slots without intent (potentially causes prejudice to airport operations)
- The handback of significant numbers of scarce slots especially after the slot return deadline (waste of scarce airport resources)
- The handback of significant numbers of scarce slots after the start of the season (waste of scarce airport resources)
- The failure to handback significant numbers of scarce slots at all (waste of scarce airport resources)
- Overbidding for slots – this often results in the wastage of scarce capacity depending upon when in the scheduling process the slots not required are returned. More significantly it leads to sub-optimal slot allocation decisions by the coordinator affecting the quality of many carriers' slots.
- Operating at night without an allocation of night movement/night quota.

Gatwick airport has introduced local rules to address some of the behaviours described above. These local rules are voluntary, self-policing measures introduced in absence of such a mechanism at national level.

Given the constrained nature of the UK's airports, especially Heathrow and Gatwick, **it is important to make best use of the available capacity and to minimise the levels of congestion and delays which affect all carriers.** This means making

optimum use of slots, and therefore addressing misuse of slots by airlines, even if this amounts to a very small proportion of total slot operations.

The table below provides figures for a number of the examples of misuse identified above.

Coordinated airport	Total no. series of slots in Summer 2004 season	No. operations significantly off slot ¹ in Summer 2004 season	Seasonal operations without a slot	Seasonal failures to cancel
LHR	9515	131	110 (0.04%)	670 (0.23%)
LGW	6939	115	546 (0.34%)	1740 (1.06%)
STN	3992	72	1453 (1.22%)	1645 (1.36%)
MAN	5626	133	714 (0.51%)	1742 (1.24%)

The vast majority of misuse of slots occurs in peak hours. In peak hours at coordinated airports any additional movements resulting from slot misuse can cause significant additional delays to other carriers.

2. What type of sanctions are appropriate?

DfT suggests a **sliding scale of sanctions relative to the seriousness of the identified misuse** could be the most appropriate way forward. This could range from **administrative** (non-financial sanctions), to **financial penalties** for misuse that is regarded as more serious, or perhaps a **combination of both types**.

An example of non-financial penalties can be found at Gatwick, where the Coordination Committee have endorsed a series of local rules which sanction airlines misusing slots, by reducing the priority given to them by the coordinator when granting requests for slots in successive seasons. In terms of developing a graduated scale of administrative penalties, other sanctions could include remote parking (forcing an airline to park off-stand), or even the confiscation of slots for intentional and repeated misuse. We welcome suggestions on further administrative sanctions that could be considered.

However, there is some doubt about whether non-financial sanctions are effective enough at changing airline behaviour. Financial sanctions may be more effective because the threat of losing money, depending upon the severity of the sanction, may have a greater **dissuasive effect on airlines' misuse of slots**. The intention of any financial sanctions should in the first instance be dissuasive, with recourse to actually imposing the fines only if the airline continues to intentionally misuse its slots. Annex C shows that of the Member States who have implemented this measure, the majority have developed financial sanctions.

Any revenues raised from the imposition of financial sanctions would accrue to the consolidated fund. This follows standard practice and ensures that the administrator

¹ "Significantly off slot" is defined as an average difference between actual and allocated times that falls outside of a slot tolerance range by a statistically significant amount. The slot tolerance ranges are: Arrivals -20 to +30 minutes and Departures -10 to +30 minutes.

of the system can be seen to be completely independent. Financial sanctions are not proposed to be a revenue-raising mechanism for the aviation industry. It is not intended that a situation is created whereby the misuse of slots directly or indirectly benefits other airlines, as the primary aim of sanctions would be to dissuade inefficient usage, and should not be extended further than this. It also important that any system of financial sanctions does not establish a principle of hypothecation that could potentially create conflicting incentives within the aviation industry.

It should be noted that this mechanism is aimed only at tackling "repeated and intentional" behaviour by airlines. It would be for ACL to identify instances where this is taking place and provide supporting evidence.

3. Who is the most appropriate body to administer and enforce the system and act as arbiter in disputes or appeals?

Option 1

The **airport operator** could be an appropriate body to administer the system as administration at a local level would ensure that circumstances relevant to that particular airport and its traffic mix are taken into account, and airport operators already have certain powers of enforcement. **Support from ACL** would be required in terms of identifying misuse of slots by airlines and providing statistical evidence to support the imposition of penalties and any appeals process.

In a tiered system of sanctions it may be appropriate for the lowest tier to be dealt with by the airport's **Slot Performance Committee (SPC)**. The SPC would have the power to impose administrative sanctions or refer the airline to the next tier (directly administered by the airport operator), perhaps making recommendations as to the appropriate sanction to be imposed. In this way the local rules that are already in place at some airports can be complimentary to these sanctions, or it may be that in time these new measures replace the locally agreed rules.

It should be recognised that the imposition of sanctions for a particular event or action does not usually take place in isolation, but is often part of an ongoing process of managing an airline's behaviour and performance through dialogue between the Coordinator, and the airline (and sometimes also the airport operator).

There is a need for an **impartial appeals process**, to resolve any disputes over the imposition of sanctions. Some airport operators have statutory dispute processes in place which could be utilised. Alternatively DfT or CAA could oversee this system, or the adjudicatory body could be the UK court system.

Option 2

If it is not felt that the airport operator is the most appropriate body to administer the system, the **coordinator (ACL)** could take on this role. The Regulation requires that airport coordinators be independent, neutral and non-discriminatory. The Regulation contains new provisions in Article 14 (Enforcement) which, for the first time, give the coordinator powers to apply sanctions to airlines in certain clearly identified situations to combat slot abuse, without the need to involve the Slot Performance Committee.

The role of SPCs is currently under review as some of the mechanisms at their disposal seem to be less effective than in the past. Some of the perceived weaknesses of the SPCs are that too many issues keep coming back to the committees over and over again, and the reaction time of the committee is very slow. A disadvantage of involving the SPC in the sanctions system is therefore that there could be a significant time-lag between ACL identifying an incident of slot misuse, and the SPC reacting to this. Rather than being the initial forum for the imposition of sanctions, the SPC could more appropriately become an **appellate body** for a system of sanctions applied by the coordinator, with further recourse to statutory dispute processes or the court system in extreme cases.

A further advantage of ACL administering the system is that it may lead to more consistent application of the sanctions system across the UK's coordinated airports than administration by Slot Performance Committees and airport operators at individual airports.

CONCLUSION

Government has an obligation to bring forward this measure in line with European Law, but does not wish to be seen to be "gold-plating" the Regulation. We are seeking a **balanced approach that is dissuasive of bad behaviour in nature and does not impose unnecessary costs on the UK aviation industry.**

We believe that generally the enforcement measures required by the amending Regulation 793/2004 should ensure **greater levels of EU-wide compliance with the slot Regulation** which in turn should **improve the effectiveness of the slot allocation system as a whole.** Given that the UK's coordinated airports are all capacity-constrained, in some cases very severely so, **any operational improvements that can be brought about as a result of the implementation of a system of sanctions should be welcomed.**

DEADLINE FOR RESPONSES AND NEXT STEPS

Responses to this consultation are requested by **7 October 2005**. DfT will analyse the responses and draft the amended Statutory Instrument which will be laid before Parliament accompanied by an Explanatory Memorandum and Regulatory Impact Assessment. The Statutory Instrument is a negative resolution - this means it does not need to be laid while Parliament is sitting or be debated in the Houses; it will come into force 21 days after it is laid. All consultees will be notified at this stage and sent copies of the amended Statutory Instrument.

Responses to the consultation and any enquiries should be addressed to:

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