

UK Civil Aviation Bill Aims to Streamline Regulatory Process

The Civil Aviation Bill (Bill) was introduced to the Parliament of the United Kingdom of Great Britain and Northern Ireland at the start of this year and sets out plans to reform the framework for the economic regulation of airports.

The Secretary of State for Transport (The Rt Hon Justine Greening MP) has stated that:

... Much of our aviation regulation is governed by 1980s legislation and needs to be updated. This draft Bill offers a package of reforms to make both regulation and the sanctions which support it flexible, proportionate, targeted and effective. It proposes removing unnecessary regulation and unnecessary intervention by central government. It devolves more responsibility to the independent specialist regulator, the Civil Aviation Authority (CAA), while ensuring that the CAA is accountable and weighs the costs and benefits of its decisions. ...

Above all the draft Bill puts the consumer first. In the economic regulation of airports with substantial market power the CAA's primary duty will be to consumers; that is passengers and owners of cargo now and in the future. In addition the Bill gives the CAA a role in promoting better public information about airline and airport performance and about the environmental effects of aviation and measures taken to mitigate adverse effects. ...

The Bill contains provisions for regulation of operators and services provided at major airports. The Bill also empowers the CAA in relation to antitrust/competition law. In addition, among other things, the Bill addresses matters of aviation security, regulation of flight accommodation, provision of information and the CAA's membership.

This article provides a brief overview of the principal areas addressed by the Bill.

Regulation of Operators of Dominant Airports

CAA's General Duty

The CAA has a general duty to carry out its functions in a manner which it considers will further the interests of air transport services regarding the range, availability, continuity, cost and quality of airport operation services. The CAA must carry out this duty, where appropriate, by promoting competition in the provision of airport operation services.

For the purposes of the Bill:

- "Air transport service" means a service for the carriage by air of passengers or cargo to or from an airport in the United Kingdom; and
- "Airport operation service" means a service provided at an airport for the purposes of:
 - the landing and taking off of aircraft;
 - the manoeuvring, parking or servicing of aircraft, including the supply of fuel;
 - the arrival or departure of passengers and their baggage;
 - the arrival or departure of cargo;

- the processing of passengers, baggage or cargo between their arrival and departure; or
- the arrival or departure of persons who work at the airport.

Further, the Bill clarifies that airport operation services include permitting a person to access or use land. Accordingly, the provision of space to retailers in the terminal building would fall under the definition of airport operation services, although the provision of retail services (e.g. sale of duty-free items) would not.

General Prohibition

If an operator of a dominant airport area located at a dominant airport does not have a licence for the dominant airport area, then the operator is prohibited from levying charges for airport operation services. “Airport area” is an area that consists of or forms part of an airport, including a section of land or a part of a building or other structure. An airport area is dominant if the CAA has made a determination that the market power test is met in relation to the area and published a notice of such determination.

There is a limited exemption, however, to the extent that an airport area operator does not have a licence on the day an area becomes a dominant area. In that case, the operator is exempt from the prohibition until a licence for that airport area is granted or the application for such a licence is refused.

Dominance: Market Power Test

The market power test is met in relation to an airport area if the following conditions apply in relation to the relevant operator – that is, the person who is the operator of the airport area at the time the test is applied.

Test	Condition
A	The relevant operator has, or is likely to acquire, substantial market power in a market.
B	Competition law does not provide sufficient protection against the risk that the relevant operator may engage in conduct that amounts to an abuse of that substantial market power.
C	For users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.

Competition

The Office of Fair Trading (OFT) is empowered by the Enterprise Act 2002 (EA 2002) to make a market investigation reference to the Competition Commission. Such investigations focus on markets where competition does not appear to be working well but where there is no apparent breach of existing competition law – for example, in the case of a non-collusive, uncompetitive oligopoly. The OFT is able to make a reference to the Competition Commission if it has reasonable grounds to suspect that any feature of a market operating in the UK prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK.

Among other things, the Bill provides for the CAA to exercise the OFT's functions under the market investigation reference provisions of the EA 2002 in relation to airport operation services, although both bodies are prohibited from exercising any of their concurrent functions in relation to the same matter.

Further, the Bill provides for most of the functions of the OFT under the Competition Act 1998 (CA 1998) to be held concurrently by the CAA, so far as they relate to the provision of airport operation services and restrictive agreements, concerted practices or decisions of associations of undertakings, and abuse of a dominant position as prohibited by the CA 1998 or Articles 101 and 102 of the Treaty on the Functioning of the European Union of 30 March 2010.

General Aviation

In the CAA's Strategic Review of General Aviation in the UK (Review), "general aviation" (GA) is defined as a civil aircraft operation other than a commercial air transport flight operating to a schedule. The GA sector includes everything from high-value business aircraft to paragliders and serves many purposes including business usage, sports and recreational activities. The Review estimates that GA is responsible for £1.4 billion in direct economic contribution in the UK and is a significant employer. The Bill does not specifically address GA, and many feel that this sector should be protected as a user of aviation services. Given that the Review concludes that GA is a sizeable sector that is growing in economic value and is an important facilitator of other business activity, this oversight may attract criticism that the Bill does not put consumers first.

Aviation Security

The Bill amends the Aviation Security Act 1982 (ASA 1982) by conferring various aviation security functions on the CAA including:

- A duty to review existing and give new aviation security directions and to make recommendations to the Secretary of State about those directions;
- A duty to make arrangements for vetting individuals carrying out certain aviation security activities;
- A duty to carry out the functions conferred on it by or under ASA 1982 relating to the protection of civil aviation against acts of violence; and
- The power to authorise persons to carry out certain activities such as inspecting aircraft and aerodromes.

Provision of Information About Aviation

The Bill imposes obligations on the CAA to provide information to assist users of aviation services including:

- A duty to publish information and advice to assist users of air transport services to compare services and facilities; and
- A duty to publish information and advice designed to raise awareness of the environmental effects in the UK of civil aviation, their impact on human health and safety, and measures taken to limit the adverse environmental effects.

Regulation of Provision of Flight Accommodation

The Bill broadens the Secretary of State's powers to regulate the provision of flight accommodation, which is the legal basis for the Air Travel Organisers' Licensing (ATOL) scheme.

The Secretary of State is empowered to make regulations requiring airlines to be licensed to provide flight accommodation (other than when they do so on a flight-only basis on aircraft which they operate) and requiring businesses acting as an agent in procuring flight accommodation to be licensed.

CAA Membership

The Bill provides that the Secretary of State is responsible for the appointment of the chair of the CAA and other non-executive members who are themselves responsible for the appointment of the chief executive (who will appoint the other executive members).

Conclusion

The main thrust of the Bill appears to be devolution of powers in the economic regulation of the aviation industry to the CAA. If this increases the flexibility and the efficiency of the regulatory process that is hoped for, then the adoption of this Bill into law should be a good step.

Legislative Track

Date	Bill Stage
23 November 2011	Draft Civil Aviation Bill published
19 January 2012	1st reading in House of Commons
30 January 2012	2nd reading in House of Commons
25 April 2012	Report stage in House of Commons
22 May 2012	3rd reading in House of Commons
23 May 2012	1st reading in House of Lords
13 June 2012	2nd reading in House of Lords

The second reading on 13 June 2012 was the first opportunity for members of the House of Lords to debate the Bill and to present their concerns and amendments. A detailed, line-by-line examination of the separate parts of the Bill took place during the fourth day of committee stage on 9 July 2012. The report stage, where further line-by-line examination of the Bill will take place, is yet to be scheduled.

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