

## The London Air Traffic Distribution Rules

### Background

1. The current TDRs came into effect in 1991, replacing the previous TDRs, which dated from 1986. Under the Airports Act (see [Annex 1](#)), the Secretary of State for Transport has the power to make such rules, which distribute traffic between airports in a ‘system’. EU regulations<sup>1</sup> give member states the power to put in place TDRs, provided they do not discriminate on grounds of nationality. The current TDRs are set out in [Annex 2](#). They prevent dedicated cargo aircraft and general aviation from using Heathrow and Gatwick airports during times of peak congestion. This prohibition is qualified, since BAA is able to grant permission for such flights. However, it has done so sparingly, if at all, to new cargo flights at Heathrow and Gatwick, while allowing existing cargo flights to continue (though in 2005 it consulted on preventing even existing cargo flights at Gatwick, except on an ad-hoc basis, given ‘the original purpose of the TDRs’). According to BAA, the original purpose of the TDRs was to ensure that priority was given in peak hour slots to passenger services.<sup>2</sup>
2. These rules only have an impact at times of peak congestion, but at Heathrow and Gatwick, as can be seen from [Annex 3](#), most of the day is described as peak, especially during the summer season.

### BA World Cargo’s complaint

3. In the context of the market inquiry, one party, BA World Cargo, argued that the TDRs mean that it must operate from Stansted, which it argued was both more expensive, and operationally sub-optimal, since it was further from many of its customers (mostly freight forwarders) at Heathrow. BA World Cargo has not argued that it would be able to operate from Heathrow, given the price of slots and congestion at that airport, but that it wished to be able to relocate its operation to Gatwick. Since the end of discounts at Stansted, Gatwick is the cheaper airport. BA World Cargo provided an estimate of the savings which it could make if it were able to transfer its operations to Gatwick:

BA would reduce cost by approximately £[X]m per annum on a like for like operation. The saving would be made by:

1. £[X]m removal of ground handling agent costs at Stansted;
2. £[X]m reduction in trucking costs by reducing the distance freight needs to travel by road—primarily the M25;
3. £[X]m reduction in airport user charges. Our forecasts show that the cost to BA of operating at Stansted is 68% higher in airport charges terms than it would be to operate the same programme at Gatwick; and

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<sup>1</sup>Article 19 of Regulation (EC) 1008/2008.

<sup>2</sup>See [www.acl-uk.org/UserFiles/File/BAA\\_TDR\\_consultation\\_paper\\_LGW.pdf](http://www.acl-uk.org/UserFiles/File/BAA_TDR_consultation_paper_LGW.pdf), paragraph 9.

These savings are partially offset by some increased manpower costs driven by increased activity at Gatwick, resulting in an overall saving of £[X]m per annum.

## Existing TDRs

- Two airports, Heathrow and Gatwick, are discouraged from competing for new business from cargo operators who want to operate during most of the day, though BAA may still grant exceptions. Table 1 shows market shares for dedicated cargo flights in the London area (including Kent International).

TABLE 1 Market shares for cargo carried in dedicated freighters for London area airports in 2007

<i>Airport</i>	<i>Cargo (tonnes)</i>	<i>% share</i>
Heathrow	74,012	21.5
Gatwick	2,464	0.7
Stansted	202,261	58.8
Luton	36,574	10.6
Kent International	28,371	8.3
Southend	134	<0.1
Total	343,816	100

Source: CAA.

- The practical effect of the TDRs, and BAA's practice of granting few, if any, exemptions to new services, may be limited in the case of Heathrow, given chronic congestion and extremely high slot values (though despite these considerations, some operators still run freighters into Heathrow). However, Gatwick has much lower slot values, even during some of the time which the CAA designates as 'peak'. It also has underused cargo facilities.
- It is far from clear that the market for general aviation is affected in the same way by the TDRs as that for large cargo aircraft. General aviation aircraft are likely to be much smaller than the 747s which BA World Cargo uses, and hence would be able to use several other non-BAA airports in the London area, such as Northolt and Biggin Hill.
- BAA currently has no incentive to lobby for the TDRs to be removed, or to grant significant exemptions at Gatwick, because it receives more revenue from BA World Cargo and other operators at Stansted than at Gatwick. A separate owner of Gatwick might wish to compete more vigorously for cargo business.
- The 1991 rules were introduced to save scarce peak capacity at Heathrow and Gatwick for passenger flights, on the assumption that cargo was less sensitive to location.

## CC recommendation in provisional decision on remedies

- The CC argued that the TDRs as applied to Gatwick restricted, distorted or prevented competition in the market for airport services, and accordingly recommended in the provisional decision on remedies that the TDRs be reviewed by the DfT.

## **Views of parties on the TDRs**

10. No parties argued that the CC's provisional finding that the cargo TDRs at Gatwick prevent, restrict or distort competition was mistaken, or that these TDRs should not be reviewed.
11. The CAA welcomed the CC's decision to recommend that the TDRs be reviewed. However, it said that there was no reason why the review should be confined to Gatwick, or to cargo flights. Heathrow currently accommodated significantly more dedicated freighter aircraft than Gatwick, despite its high slot values. It might also be appropriate to include general aviation as well as cargo flights in any review.
12. It also noted that a cargo operator could be exempted by the airport operator from the TDRs, and a separately-owned Gatwick might be expected to grant such exemptions, given that it no longer needed to fear losing the extra margin it received from aircraft using Stansted.
13. BA welcomed the CC's recommendation that the Government initiate a review of the cargo TDRs at Gatwick.
14. BAA made no comment on this finding or the associated remedy.

**Section 31, Airports Act 1986—traffic distribution rules**

(1) Where—

(a) it appears to the Secretary of State that two or more airports are airports serving the same area in the United Kingdom, and

(b) he considers it appropriate to do so,

he may in accordance with this section make rules (to be known as traffic distribution rules) providing for air traffic, or any class or description of air traffic, to be distributed between those airports in such manner as he thinks fit.

(2) It shall be the duty of the CAA so to perform its air transport licensing functions [and its route licensing functions] as to secure that any traffic distribution rules in force under this section are complied with.

(3) Traffic distribution rules may do any of the following things (and no more), namely—

(a) specify classes or descriptions of air traffic that are permitted under the rules to use any of the airports concerned;

(b) impose prohibitions or restrictions in relation to the use of any of those airports by air traffic of any class or description specified in the rules;

(c) provide for the rules to come into operation (in whole or in part) at such time or in such circumstances as may be specified in the rules.

(4) Before making any traffic distribution rules the Secretary of State shall consult the CAA who shall in turn, before giving advice to the Secretary of State, consult such of the following namely—

(a) airport operators who appear to it to be likely to be affected by the rules,

(b) operators of aircraft who appear to it to be likely to be so affected, and

(c) organisations representing airport operators or operators of aircraft, as it considers appropriate.

(5) Where—

(a) the subject-matter of any particular rules made by the Secretary of State under this section is a matter in relation to which the CAA has given advice to the Secretary of State (whether before or after the passing of this Act), and

(b) those rules are so made not later than five years after the giving of that advice, the requirements of subsection (4) shall be taken to have been satisfied with respect to those rules.

(6) In subsection (1) the reference to airports serving the same area in the United Kingdom is a reference to airports in the case of which a substantial number of the passengers departing from, or arriving at, the airports by air (other than those interrupting their flights there or transferring from one flight to another) have as their original points of departure, or (as the case may be) as their ultimate destinations, places situated within the same area in the United Kingdom.

## Traffic Distribution Rules 1991 for airports serving the London area

### Whereas:

(1) It appears to the Secretary of State that London (Heathrow), London (Gatwick) and London (Stansted) are airports serving the same area in the UK and he considers it appropriate to make the following rules; and

(2) the Civil Aviation Authority ('the CAA') has given advice to the Secretary of State in relation to the subject matter of these rules on 17 July 1989 and 14 January 1991;

**Now therefore**, the Secretary of State, in exercise of his powers under Section 31(1) of the Airports Act 1986<sup>3</sup> and of all other powers enabling him in that behalf, hereby makes the following traffic distribution rules:—

1. These rules may be cited at the Traffic Distribution Rules 1991 for Airports serving the London Area, and shall come into force on 5 March 1991.
2. All classes and descriptions of air traffic are permitted under these rules to use London (Heathrow), London (Gatwick) and London (Stansted) unless restricted from doing so under these rules.

### Heathrow

3. Subject to paragraph 5 below, air traffic engaged on whole plane cargo services or general or business aviation, other than traffic in relation to which the airport operator has given the aircraft operator permission to operate at the airport during the periods of peak congestion, is restricted in its use of Heathrow airport in that it shall not be operated during such periods of peak congestion at the airport as have been notified by the CAA or as may from time to time be notified by the CAA, having regard to advice from the airport operator and the scheduling committee at the airport.

### Gatwick

4. Subject to paragraph 5 below, air traffic engaged on whole plane cargo services or general or business aviation, other than traffic in relation to which the airport operator has given the aircraft operator permission to operate at the airport during the periods of peak congestion, is restricted in its use of Gatwick airport in that it shall not be operated during such periods of peak congestion at the airport as have been notified by the CAA or as may from time to time be notified by the CAA, having regard to advice from the airport operator and the scheduling committee at the airport.

5. The rules in paragraphs 3 and 4 above shall not apply to any air traffic required to land at the airport in question because of an emergency or any other circumstance beyond the control of the operator and commander of the aircraft.

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<sup>3</sup>See [Annex 1](#).

6. In these rules:

'general or business aviation' means any air traffic not falling into any of the following categories, that is to say:—

- (i) scheduled air services;
- (ii) non-scheduled air transport operations for hire or reward and, in the case of passenger air transport operations, where the passenger seating capacity of the aircraft used exceeds 10;
- (iii) official flights;
- (iv) positioning flights;
- (v) training flights;

'notified' means set forth in a document published by the CAA and entitled 'United Kingdom Notam' or 'United Kingdom Air Pilot' and for the time being in force;

'official flights' means any traffic engaged on the Queen's flight, or on flights operated primarily for the purposes of the transport of Government Ministers or visiting Heads of State or dignitaries from abroad;

7. The Traffic Distribution Rules 1986 for Airports serving the London Area are hereby revoked

5 March 1991

A. J. Goldman  
An Under Secretary  
Department of Transport

**Summer 2008 hours of peak congestion****Heathrow***Arrivals*

Mon 0500–2155  
Tues 0500–2155  
Weds 0500–2155  
Thurs 0500–2155  
Fri 0500–2155  
Sat 0500–1755  
Sun 0500–2155

*Departures*

Mon 0500–1955 2100–2155  
Tues 0500–2155  
Weds 0500–2155  
Thurs 0500–2155  
Fri 0500–2155  
Sat 0600–1855 2100–2155  
Sun 0700–2155

**Gatwick**

Mon 0500–1355 1500–2055  
Tues 0500–1355 1500–1955  
Weds 0500–1955  
Thurs 0500–1255 1400–1655 1800–1955  
Fri 0500–2255  
Sat 0500–1455  
Sun 0500–2055