

**CONSULTATION ON PROPOSED
DESIGNATION AND DE-DESIGNATION
CRITERIA FOR AIRPORTS**

February 2007

Consultation on proposed designation and de-designation criteria for airports

Contents

Purpose of the consultation	3
Timetable for the consultation	3
Background.....	3
Developments since publication of the 1995 criteria.....	4
Market Liberalisation.....	4
Developments in Competition Law	5
Consideration of a request for the designation of Luton Airport	5
Recent reports on the UK airports sector	6
The Government's approach to proportionate economic regulation	6
The existing criteria - the case for change.....	7
Assessing the existing criteria.....	7
Mixing the relevant test with evidence	7
Taking account of likely future developments.....	8
Application to designation and de-designation.....	8
The airport's market position	8
The importance of UK and European competition law	8
The costs and benefits of price cap regulation.....	8
Conclusion - the case for change	9
Developing new criteria	9
The Degree of Market power	10
The role of competition law	10
The costs and benefits of price cap regulation.....	11
The proposed criteria.....	11
Wider considerations	12
Next steps	12
Consultees	12
Regulatory Impact Assessment	12
Freedom of Information	13
Responses and enquiries	13

Consultation on proposed designation and de-designation criteria for airports

Annex A List of Consultees14
Annex B Code of Practice on Consultation.....15

Purpose of the consultation

1. The Department for Transport (DfT) wishes to consult on criteria for the designation and de-designation of airports under Section 40 of the Airports Act 1986. If appropriate, and in the light of the outcome of this consultation, it will then consult separately on the possible de-designation of Manchester and Stansted airports.
2. There is no change to the policy of designating some airports for price control by the Civil Aviation Authority (CAA) as set out in Section 40 of the Airports Act. Rather, this consultation relates to the existing criteria, established in 1995, and the development of a new set of criteria for the designation and de-designation of airports.
3. In taking any decision to designate or de-designate an airport under Section 40, the Secretary of State will take account of all relevant factors and evidence in reaching his decisions. These criteria will inform and guide his thinking, but should not be seen as exclusive.
4. This consultation does not address the procedure by which the Secretary of State will make a decision in relation to the designation or de-designation of an airport.

Timetable for the consultation

5. The CAA has recently begun its price cap review for Manchester airport and is already some way through its review of BAA's designated airports including Stansted. In view of this, and the need so far as possible to avoid imposing unnecessary regulatory process costs, we are asking for responses within 8 weeks so that we can proceed to the second stage as soon as possible, which is likely to be in June.

Background

6. In terms of economic regulation, UK airports fall into three categories:
 - airports not subject to any sector-specific economic regulation. These airports have an annual turnover, measured over each of the previous three years, of less than £1m;
 - airports that require a permission to levy airport charges. Any airport with an annual turnover in excess of £1m requires permission to levy airport charges. These airports are required to submit financial information to the CAA. In addition, the CAA has powers to attach conditions to remedy or prevent certain courses of conduct; and
 - airports designated by the Secretary of State for price cap regulation. The CAA must attach conditions relating to the information in the accounts and the maximum amount raised from airport charges for these airports.
7. This consultation relates to the criteria that are applied when assessing the case for the application, or the removal, of the additional regulatory provisions associated with designation.
8. The system of economic regulation of airports was established in the Airports Act 1986. This envisages a system of general safeguards for airports meeting a £1m turnover

threshold that requires them to seek permission to levy charges from the Civil Aviation Authority (CAA), and enables the CAA to take action if the airport acts in an abusive way.¹ This threshold has not changed and, therefore, over time, the threshold has led to an increasing number of airports qualifying for economic regulation. Currently more than 50 airports meet the threshold.

9. An additional level of regulation is provided for those airports designated by the Secretary of State. Under the system established by Part IV of the Airports Act, designation requires the CAA to impose price control on the designated airport to regulate the maximum revenue the airport can receive from airport charges during a five year period. Heathrow, Gatwick, Stansted and Manchester were designated in 1986 and have remained designated. No other airports have been designated since 1986 and none has been de-designated.

10. No statutory criteria for designation or de-designation were laid down by the Airports Act. However, in the context of a 1995 review of the framework of airport economic regulation,² the then Department of Transport concluded that designation should not be an automatic process and identified four criteria relevant to considering the issue of airport designation (and, by implication, de-designation). These were:

- the market position, including extent of competition from other airports and other modes;
- prima facie evidence of excessive profitability or abuse of monopoly position;
- the scale and timing of investment, and their implications for profitability; and
- efficiency and quality of service.

Developments since publication of the 1995 criteria

11. Since the publication of these criteria in 1995 there has been a number of relevant developments.

Market Liberalisation

12. In 1993 the 'third package' of aviation reforms removed many of the restrictions that had previously limited competition between EU airlines. Any European airline is now permitted to operate services between European airports without prior regulatory approval. In addition, during the 1990s there began a process of the commercialisation of regional airports, as a number of airports passed from local authority to private control, or to joint public-private ownership structures. This still continues.

13. Over this period there has also been considerable passenger growth with total UK passengers per annum rising from 112m in 1993 to 228m in 2005. In addition, the number of airports serving more than 1 million passengers per annum has increased from 13 to 20 over the same period.

¹ Section 41 of the Airports Act allows the CAA to impose conditions to its permission to levy charges which remedy or prevent the following courses of conduct by an airport operator: unreasonable discrimination, unfair exploitation of bargaining power, unreasonable limitation of rights to carry out relevant activities, and the fixing of charges which are insufficient to cover costs and materially harm (or are designed to materially harm) another airport operator.

² Review of the Framework for Economic Regulation of Airports 1995

Developments in Competition Law

14. In 2000, the Competition Act 1998 came into effect and introduced two new competition-based prohibitions: the Chapter I prohibition prohibits agreements between two or more undertakings which prevent, restrict or distort competition within the UK³; and the Chapter II prohibition prohibits conduct by an undertaking or undertakings which constitutes an abuse of a dominant position.⁴ In addition the Office of Fair Trading (OFT) was given new powers under the 1998 Act to enforce these prohibitions including the power to impose fines of up to 10% of world-wide turnover on an undertaking found to be in breach of either of the prohibitions.

15. In 2003 the Enterprise Act 2002 came into force. This gave new powers to the OFT to make market investigation references to the Competition Commission (CC) where the OFT has reasonable grounds for suspecting that any feature, or combination of features, of a market for goods or services prevents, restricts, or distorts competition in the UK⁵. Following a reference, the CC is then required to decide whether competition is prevented, distorted, or restricted and if so what, if any, action should be taken to remedy the adverse effect on competition or any detrimental effect on customers resulting from it. Where the CC concludes that such action is required, there is a wide range of remedies which it is able to impose, covering both behavioural remedies (for example, price regulation and a ban on exclusivity deals) and structural remedies (including, for example, forced divestment).

16. Finally, following the implementation of Regulation 1/2003/EC in 2004, the OFT is required to apply Article 81 or Article 82 EC Treaty (the EC equivalents of the Chapter I and Chapter II prohibitions) where the agreement or conduct in question is capable of affecting trade between Member States. Prior to that, Articles 81 and 82 were enforceable in the UK by the European Commission.

Consideration of a request for the designation of Luton Airport

17. In 2000, an application was made to the then Secretary of State for the Environment, Transport and the Regions for the designation of Luton Airport. As part of the Secretary of State's consideration of the application to designate Luton airport, both the Secretary of State and the CAA made a number of observations on the 1995 criteria.⁶ The CAA, in its advice to the Secretary of State, said that it did not consider the 1995 criteria as the only criteria to be adopted. Given the detailed regulatory oversight entailed by designation, the CAA said that the test to be met should be stronger than establishing the existence of some market power and that finding that an airport was dominant within the meaning of Article 82 of the EC Treaty or Section 18 of the Competition Act 1998 would not, in itself, be sufficient for the CAA to conclude that designation would be appropriate. However, the CAA concluded that, since Luton airport did not hold a dominant position, it was not necessary for it to consider the suitability of all of the criteria before advising against its designation.

³ Section 2 of the Competition Act 1998

⁴ Section 18 of the Competition Act 1998

⁵ For more information see the guidance issued by the OFT, notably: 'Market Investigation References', OFT, March 2006.

⁶ Application to designate Luton Airport for the purpose of part IV of the Airports Act. CAA advice to the Secretary of State for the Environment, Transport and the Regions (July 2000)..

18. In reaching his decision not to designate Luton airport following receipt of the CAA advice, the then Secretary of State took the view that the relationship between airport operator and airport users should normally be governed by commercial considerations within the regulatory framework, and that Section 41 of the Airports Act 1986 should be the first avenue of redress for an airline which believes it is subject to unfair treatment. It followed from this that the Government regarded designation requiring price control under Section 40 of the Act as a measure to be taken only when the normal mechanisms governing airport pricing were not sufficient. This meant that, before deciding on designation, the Secretary of State would need to be convinced that to do so would be proportionate to the actual or potential abuse of a dominant market position to the significant detriment of users after all other commercial and regulatory avenues had been exhausted.

19. He agreed with the CAA that such market power as Luton airport may hold was not sufficient grounds for designation. He also briefly commented on the criteria that had not been considered by the CAA and concluded that the available evidence on these would not justify designation.

Recent reports on the UK airports sector

20. The issue of de-designation has arisen in recent reports by the Transport Select Committee⁷ (which recommended de-designation of Manchester and Stansted airports), the CAA⁸ (which recommended that the Government consider the de-designation of Stansted airport as part of its review of price caps for BAA's South East airports) and the OFT⁹ (which recommended in their report on the UK airport market that the CAA give advice on whether Manchester airport should be de-designated). All three reports recommended also that the criteria for de-designation be made clear and the CAA and OFT recommended that the cost of price regulation should be considered.

21. The Manchester Airport Group has also recently applied to the Secretary of State to de-designate Manchester airport. The CAA has subsequently published its initial views on the competitive constraints facing Manchester Airport.¹⁰

The Government's approach to proportionate economic regulation

22. Competition is preferable to regulation which may distort market decisions and stifle innovation. Even where competition acts as a weak discipline on behaviour, regulation should only be preferred if can be expected to deliver a clear net benefit. So economic regulation needs to be appropriate and proportionate.

23. As noted above, the UK airports sector, as with aviation generally, has evolved over time. What was appropriate at the time of the Airports Act 1986 is not necessarily the case

⁷ The Work of the Civil Aviation Authority - Thirteenth Report of Session 2005 - 06 (HC 809), House of Commons Transport Committee November 2006

⁸ Airports price control review - initial proposals for Heathrow, Gatwick and Stansted CAA December 2006 (Chapter 25)

⁹ UK airports - Report on the market study and proposed decision to make a market investigation reference OFT December 2006 (Chapter 10)

¹⁰ Manchester Airport price control review - policy consultation January 2007

20 years later. The same is true of the view taken of regulation and the principles of better regulation, which now focus much more on the potential costs and distortions of regulation.

24. The Legislative and Regulatory Reform Act 2006 sets out four principles to which those exercising regulatory functions should have regard. They are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.

The existing criteria - the case for change

25. The 1995 criteria stated that designation should not be an automatic process but that there were four criteria relevant to considering designation of an airport (and, by implication, de-designation). These were:

- the market position, including extent of competition from other airports and other modes;
- prima facie evidence of excessive profitability or abuse of monopoly position;
- the scale and timing of investment, and their implications for profitability; and
- efficiency and quality of service.

26. As discussed above, there has been considerable change to the competition regime, the nature of competition in the UK aviation sector and the Government's approach to regulation. It is, therefore, timely to review whether these criteria remain fit for purpose and whether additional, explicit, criteria for the de-designation of airports should be established.

Assessing the existing criteria

27. In order to consider the case for change and to develop an appropriate set of alternative criteria, it is useful to consider the strengths and weaknesses of the existing criteria.

Mixing the relevant test with evidence

28. The existing criteria include both a test (criterion 1) and a list of the evidence that is likely to be relevant to assessing the first criterion. This combination of the test and the evidence is unlikely to be helpful or clear for a number of reasons.

29. First, including a list of potential evidence in the criteria introduces the risk that these items will be seen as a checklist rather than being a non-exhaustive list of examples of potential evidence.

30. Second, the interpretation of the evidence highlighted in the existing criteria may not be appropriate for every airport and their interpretation may not be straightforward. For example, the third criterion implies that the assessment of (de)designation requires an assessment of future levels of investment and of profitability. Such analysis is not easy and the consequential effect of (de)designation in determining how this might affect the airport's financial health is unclear.

31. Third, the evidence highlighted appears to apply more readily to the assessment of designation and may not be appropriate for the consideration of de-designation. For example, the second criterion refers to evidence of excessive profitability - something that is unlikely to be relevant to the assessment of the conduct of a price capped airport.

32. Therefore, we consider that any new criteria should focus on the appropriate "tests", leaving the issue of what evidence might be appropriate to be considered as part of the process of applying these tests.

Taking account of likely future developments

33. The existing criteria appear to focus on the current and historical positions of the airport(s) being assessed. Any assessment will need to start from evidence on the airport's current position, taking account of current information and historical evidence. It should also take account of what this evidence suggests for the likely future position of the airport, recognising the inevitable uncertainties in doing so, and whether or not price regulation will be necessary going forward.

34. New criteria should therefore be capable of being forward looking.

Application to designation and de-designation

35. The present criteria were developed in the context of questions about the designation of airports. In developing new criteria, it would seem desirable that the same set of criteria should be capable of being applied to questions of designation and de-designation.

36. It is conceivable that, once an airport has been de-designated, it might subsequently be considered for designation again. It is important that airports can be re-designated in the light of changed circumstances - such cases should be considered on their individual merits and it seems appropriate that the Secretary of State should refer to the same set of criteria for each decision. It is also worth noting that the threat of designation, backed by clear criteria, may act as a deterrent to potential abusive behaviour, reducing the need for actual designation.

The airport's market position

37. The first criterion refers to the airport's market position. However, this criterion does not make clear the degree or nature of market power accruing from that market position which might typically be associated with airports that are to be designated (or de-designated).

The importance of UK and European competition law

38. More generally the criteria do not refer to, or take account of, UK and European competition law and the potential for this, and other relevant legislation, to provide appropriate protection for customers against abuse (as is the case in most other sectors of the UK economy).

The costs and benefits of price cap regulation

39. The existing criteria do not explicitly consider the appropriateness of price regulation.

40. There are two elements to this assessment: first, whether price caps offer additional benefits (i.e. benefits over and above those delivered by competition law), taking into account the magnitude of the risk of price rises or other abuse and its potential detrimental effects were such abuse to occur; and second, whether those additional benefits exceed the costs and distortions that price regulation can be expected to bring.

41. It is important to focus on the impact of price caps over and above that which might be expected from competition legislation. Imposing an additional regulatory safeguard, i.e. a price control, when an existing tool, i.e. competition law, is likely to be effective is unlikely to be justified. It is also important to understand whether a price cap would be an effective tool for the perceived harm. While price caps obviously address concerns about an airport's ability to raise prices above the competitive level, they are less likely to be appropriate as a first line of defence for exclusionary practices, such as exclusivity deals and tying arrangements.

42. The Government's better regulation agenda points to taking account of the costs and distortions associated with regulation. There has also been greater recognition by the CAA of the potential adverse effects of its price regulation since 1995. The CAA has recently set out in its December 2006 document on the BAA price controls¹¹ its views on the potential, under certain circumstances, for price cap regulation of airports to distort normal commercial decision making by airports with the potential to cause detrimental effects on future airport competition and for airport users. In addition, the process of regulation requires resources - from regulators and stakeholders - some of which may be avoided should regulation be reduced. New criteria would need to take explicit account of this.

Conclusion - the case for change

43. Based on the above discussion, it appears that there is a strong case for change, and for establishing a set of new criteria for use by the Secretary of State in considering both questions of designation and of de-designation.

44. Our view is that the existing designation criteria should be updated and that new criteria should be capable of being applied to consideration of both designation and de-designation.

Q1 Do you agree that there is a strong case for updating the existing criteria for designation and for establishing a set of criteria that would apply to both the designation and de-designation of airports?

Developing new criteria

45. The discussion in the previous section suggests that the (de)designation criteria should have the following features:

- a clear distinction should be made between the relevant tests and the evidence that might be used in any assessment against these tests;
- tests should require an assessment of likely future circumstances rather than focussing solely on the past or present;
- tests should apply to both designation and de-designation, in a coherent manner;
- greater transparency as to the degree of market power that may trigger designation, including an assessment of the airport's ability profitably to raise prices above the competitive level or reduce quality or output below the competitive level;
- the potential role of UK and European competition law should be recognised; and
- the benefits of price cap regulation in relation to the perceived harm should be weighed against its potential costs.

¹¹ Price control review - initial proposals for Heathrow, Gatwick and Stansted Airports December 2006

These considerations are discussed further in the following three sections and the criteria that are proposed as a result are set out below.

The Degree of Market power

46. Price regulation should be carried out only when necessary. Thus, unless an airport has or is likely to have substantial market power to the extent that it has a substantial ability to increase and sustain prices profitably above the competitive level or restrict output or quality below the competitive level, it should not be considered for designation. We consider that an airport in this position would also be dominant within the meaning of the Chapter II prohibition and Article 82: a necessary but not sufficient condition for designation.

47. The assessment of market power is a complex one and has to be assessed on a case by case basis. The OFT has produced guidance on this issue¹² and this will be used to inform the Department's analysis. In brief, however, the following are the type of factors that are likely to be relevant when examining the extent to which an airport is subject to competitive constraints that might prevent it from profitably sustaining prices above competitive levels or restricting output or quality below the competitive level in any of the relevant markets in which it operates:

- *market shares* - high market shares may be indicative of market power although it is acknowledged that they are not always a reliable guide. The European Court has stated, in relation to Article 82, that in the absence of evidence to the contrary, dominance can be presumed if any undertaking has a market share consistently above 50%¹³;
- *existing competitors* - the extent to which the airport competes for customers with other undertakings, the market share of the airport relative to the shares of those undertakings and the extent to which they have fluctuated over time and might be expected to move in the future;
- *potential competition* - the prospect of new entry exercising a competitive constraint, including an assessment of whether entry barriers, such as planning restrictions or other economic, physical, geographic or legal obstacles, may make new entry less likely or less speedy;
- *capacity constraints* - whether there are or are likely to be capacity constraints in the future which will increase the airport's ability to raise prices or restrict output or quality;
- *buyer power* - whether buyers have the choice and the strength and structure to exercise bargaining strength in negotiations with the airport.

48. These factors are not exhaustive and it may be appropriate to examine others in the particular circumstances of the airport under consideration. In addition, all relevant factors are to be considered in the round when assessing whether or not the airport has substantial market power which may justify designation.

The role of competition law

49. The Government's stated position is that competition is preferable to regulation, as regulatory intervention brings with it the risk that it may further distort commercial decision making and market interaction which could undermine efficiency and stifle innovation. Furthermore, as explained above, there are now wide-ranging powers in domestic and EC law to tackle anti-competitive agreements and practices, in addition to the CAA's specific powers in relation to airports under section 41 of the Airports Act. As a general rule, where

¹² "Assessment of market power", OFT, December 2004

¹³ Case C62/86 AKZO Chemie BV v Commission [1993] 5 CMLR 215

competition is weak and there is a risk of anti-competitive effects, these legislative provisions provide the requisite tools to safeguard competition and the economic benefits it brings.

50. With the exception of merger control, however, competition law can only apply after the event and the detection, demonstration and remedy of a breach is an imperfect and potentially costly process. While the severity of the penalties that a breach of the Competition Act prohibitions or Articles 81 and 82 can attract may operate as a discipline on the current and future conduct of an airport with market power, it will not always have a sufficient deterrent effect. Given the potential gap before enforcement occurs, it may be necessary, in certain circumstances, to consider the imposition of *ex ante* price regulation to control the scope for significant adverse effects which could flow from the exercise of market power. Such circumstances might exist where the structure of the market is such that there are either no or very weak competitive incentives on the airport in question and either there is no or very limited prospect of that improving in the future or the possibility that competition may weaken further.

The costs and benefits of price cap regulation

51. Where the circumstances exist to merit consideration of price cap regulation, it should only be preferred if can be expected to deliver a clear incremental benefit, taking account the benefits of competition law, and also the costs of regulation. Such an assessment will take account of the magnitude of the risk that the airport will exploit its market power and of the detrimental effects were it to do so. In this way regulatory action will meet the principles of better regulation set out by the Better Regulation Commission as it will only be turned to where it represents the most appropriate form of action and where it will deliver an appropriate response to the problem

The proposed criteria

52. The following revised criteria for the assessment of designation and de-designation are proposed, to be applied in the light of the above:

Designation of an airport is appropriate if, in the view of the Secretary of State:

1. the airport, either alone or together with any other airport(s) in common ownership or control, has or is likely to have substantial market power; and
2. domestic and EC competition law may not be sufficient to address the risk that, absent regulation, the airport would increase and sustain prices profitably above the competitive level or restrict output or quality below the competitive level; and
3. price regulation under Section 40 of the Airports Act 1986 would, taking account of the magnitude of the risk identified in (2) and its detrimental effects were it to materialise, deliver additional benefits (i.e. over and above competition law) which exceed the costs and potential adverse effects of price regulation (i.e. the incremental benefits are positive).

De-designation is appropriate if, in the view of the Secretary of State any of these factors would cease to apply were the airport to be de-designated.

In reaching any decision to designate or de-designate, the Secretary of State will take into account all other relevant matters, including international obligations.

Q2 Do you agree the above new criteria for designation and de-designation?

Wider considerations

53. The EU Commission is currently considering the regulation of airport charges and there may be implications for the application of the criteria when a Directive issues.

54. The European Commission has recently published a proposed directive on airport charges which outlines common principles for determining the processes by which airport charges are set. It does not propose directly to regulate the levels at which charges are set and therefore does not bear on the above criteria. As it stands, the Directive would affect all airports used by at least 1 million passengers per annum. As such, there may be implications for the application of the de-designation criteria if and when the Directive comes into force.

55. The Department for Transport will be holding a consultation on the draft Directive in the Spring.

Next steps

56. The Department expects to make a decision on the new criteria within 2 months after the deadline for responses to this consultation subject to the scale and nature of the responses. It will then consult on their application to Manchester and Stansted airports. In preparation for this, it has asked the CAA to gather relevant evidence now so that it would be able give its advice to the Department speedily once a decision has been made on the criteria. We expect to include CAA's advice as part of the second stage consultation which will last 12 weeks.

Consultees

A list of organisations/stakeholders to whom we have sent this consultation is included at **Annex A**.

If you have any suggestions of others who may wish to be involved in the consultation process please forward this to them or let us know.

This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" A summary of the criteria is at **Annex B**. A full version of the code can be found at:

<http://www.cabinetoffice.gov.uk/regulations/consultation.htm>

Ministerial approval has been given for a shorter consultation period of 8 weeks to minimise the impact on the next stage of the consultation process.

Regulatory Impact Assessment

A regulatory impact assessment has not been prepared as the designation criteria do not have a direct impact on business.

Freedom of Information

According to the requirements of the Freedom of Information Act 2000, all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.

Responses and enquiries

Responses should be received by 20 April 2007; and sent to Eric Weinstein at the address below. The Department would prefer to receive responses by e-mail.

Enquiry point for the consultation:

Eric Weinstein
Zone 1/28
Great Minster House
76 Marsham Street
London
SW1P 4DR.
Email: designation.criteria@dft.gsi.gov.uk
Telephone: 020 7944 3171
Fax: 020 7944 2192

The consultation document is available at <http://www.dft.gov.uk/consultation/open/>

Annex A List of Consultees

Airport group

BAA
MAG (Manchester Airport Group)

Other airports

Belfast City Airport
Belfast International Airport
Birmingham Airport
Bristol Airport
Cardiff Airport
Leeds Bradford Airport
Liverpool Airport
London City Airport
London Luton Airport
Newcastle Airport
Prestwick Airport

Airport representative bodies

Airport Operators Association (AOA)
ACI Europe

Airport consultative committees

Gatwick Airport Consultative Committee
Heathrow Airport Consultative Committee
Stansted Airport Consultative Committee
Manchester Airport Consultative Committee

Airline representative bodies

Air Transport Association	(ATA)
Airline Operators Committee - Gatwick	(AOC)
Airline Operators Committee - Heathrow	(AOC)
Airline Operators Committee - Manchester	(AOC)
Airline Operators Committee - Stansted	(AOC)
London Airport Consultative Committee - Gatwick	(LACC Gatwick)
London Airport Consultative Committee - Heathrow	(LACC Heathrow)
London Airport Consultative Committee - Stansted	(LACC Stansted)
Association European Airlines	(AEA)
Board of Airline Representatives in the UK	(BARUK)
British Air Transport Association	(BATA)
European Low Fares Airline Association	(ELFAA)
European Regions Airline Association	(ERAA)
International Air Carrier Association	(IACA)
International Air Transport Association	(IATA)

Devolved administrations

Scotland
Wales

Others

Air Transport Users Council
Civil Aviation Authority
Department for Regional Development (DRD) N Ireland
Office of Fair Trading (OFT)

Annex B Code of Practice on Consultation

The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.

Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

The code contains six criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

Consultation criteria

Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.

Ensure that your consultation is clear, concise and widely accessible.

Give feedback regarding the responses received and how the consultation process influenced the policy.

Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

A full version of the code of practice is available on the Cabinet Office web-site at:

<http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

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Consultation Co-ordinator
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Zone 9/9 Southside
105 Victoria Street
London, SW1E 6DT

Email: Consultation@dft.gsi.gov.uk