

# Guidance on consumer enforcement

**CAP 1018**



**Published by the Civil Aviation Authority, 2016**

Civil Aviation Authority,  
Aviation House,  
Gatwick Airport South,  
West Sussex,  
RH6 0YR.

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**First published 2015**

Second edition September 2014  
Third edition May 2015  
Fourth edition February 2016  
Fifth edition March 2016

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# Guidance on Consumer Enforcement

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## Purpose

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- 1.1 The CAA's [Regulatory Enforcement Policy](#) (CAP1326) sets out the CAA's overall approach to enforcement. This document provides stakeholders with guidance on our approach to enforcing consumer protection law in the aviation sector and outlines the legal framework in which our work fits.

## Scope

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- 1.2 The aviation market is international and our interventions will not therefore be limited to benefiting UK nationals only but may include action which has an impact on any users of UK airports and consumers of aviation services sold in the UK. Consequently, our interventions will not be limited to UK registered companies.
- 1.3 In this guidance, when we refer to 'consumers', we mean the endusers of an aviation service who do not themselves provide an aviation service. Examples of consumers in this context include passengers, freight customers, student pilots or buyers of flying lessons.
- 1.4 This guidance covers two specific categories of consumer legislation:
- European legislation providing rights to air passengers; and
  - consumer protection legislation covered by Part 8 of the Enterprise Act 2002 (EA02).
- 1.5 There is a separate piece of [guidance covering ATOL enforcement](#) (CAP 1039).

## Definition of Enforcement, Breach and Actions

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- 1.6 Enforcement in this context is any activity that we carry out to seek to remedy a breach, or a suspected or potential breach, of consumer protection legislation.
- 1.7 A breach is a failure to comply with legal obligations. We will normally take enforcement action where non-compliance affects the collective interest of consumers or a specific group of consumers, rather than based on an individual complaint.

- 1.8 There are a range of actions that we can take to secure compliance, including:
- providing informal advice to businesses,
  - publishing industry guidance,
  - developing self- and co-regulation schemes,
  - inspections,
  - issuing warning letters,
  - requesting information from businesses,
  - securing legal undertakings,
  - taking action in the High Court to obtain Enforcement Orders, and
  - criminal prosecutions (fines of up to £5,000 per offence).
- 1.9 Appendix A sets out full details of the legislation that we enforce in the consumer protection area and the sanctions that can be imposed.

## Expectations

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- 1.10 This section sets out what industry can expect from the CAA when carrying out its enforcement work and what the CAA expects from industry. The CAA will:
- deal with stakeholders in a professional and courteous way;
  - normally raise compliance issues with the business informally before taking further action. In some cases we might immediately move to formal action: this is likely to be in cases where there is significant consumer detriment and we judge that it can be remedied most effectively in this way;
  - take a consistent approach to our enforcement work;
  - consider how best to bring businesses back into compliance rather than focusing primarily on penalising previous conduct;
  - protect commercial and personal data that is provided to us in line with legal disclosure constraints;
  - aim to drive compliance through empowering consumers. We will promote awareness of passenger rights and provide information and

advice to allow consumers to take up their complaint effectively with industry; and

- have regard to the Regulator's Code<sup>1</sup>.

1.11 Routine compliance with the law is our ultimate goal and, in order to achieve this, we expect the following from industry:

- to be aware of its legal obligations and observe them;
- when the law changes, businesses almost always have a reasonable notice period before new obligations come into force, and we expect that they will use this notice period to determine how to comply. Calculation of a reasonable period to comply begins from the date when a business knows what the law requires – and certainly not from the date when we notify a business that it is noncompliant;
- where the law appears unclear, a business disagrees with the CAA's understanding of the law, or has difficulties in ensuring compliance, we expect the business to discuss this with us;
- we expect industry to plan for the necessary changes in legal requirements and do not expect the inflexibility of (or cost of making necessary changes to) IT systems to be a valid reason to explain non-compliance; and
- we expect industry to develop internal management systems that ensure senior managers are able to both secure (and provide assurance of) compliance with legal responsibilities. We do not regard time for internal escalation as a reason to delay action to ensure compliance. Where requested, we expect businesses to co-operate with us in building confidence that these internal management systems are robust and effective.

## Stages of Enforcement

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1.12 We aim to achieve the right balance of formal and informal approaches, depending on what is appropriate in the circumstances. Whilst enforcement through the Courts may be the appropriate response to the most serious breaches of consumer protection legislation, we anticipate that this will be the exception rather than the rule. The diagram below shows the range of enforcement tools available to us and, at a high level, how we anticipate we will deploy these tools.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

- 1.13 It should be noted that the diagram below is for illustrative purposes only. It is not intended to imply that there is a fixed order in which enforcement tools will be used. For example, informal dialogue could take place before formal guidance is issued and formal advice is provided. Alternatively, a very serious issue may warrant immediate formal action.
- 1.14 Our choice of approach will be guided by the seriousness of the issue, the type of action to which the particular business will best respond and intelligence, including knowledge of the business's intent and past behaviour.



- 1.15 Advice and guidance – we will provide general information and guidance to make it easier for businesses to understand their obligations and to comply with the law. Wherever possible, we will involve industry in developing the content and style of guidance. We may publish guidance that includes best practice. Where we do, we will set out clearly the legal obligation and any enforcement action would be based on achieving compliance with that legal obligation. We will advise industry if the CAA's interpretation of the law changes, for example, by publishing information about European court cases. We encourage businesses to approach us promptly if they have difficulties in ensuring compliance, or their own interpretation of the law changes materially. In such circumstances, we will normally provide advice and give the business a reasonable opportunity to comply with the law rather than taking immediate enforcement action, although we will consider circumstances on a case by case basis. When we identify a possible breach, we will normally initially provide advice and guidance to the business and provide the opportunity for them to move into compliance



before considering the use of our formal powers. We expect the majority of our work to fall into this category.

- 1.16 Self-regulation and co-regulation – self-regulation is generally where industry administers a solution to address consumer issues without formal oversight from the regulator. There is not normally a legal backstop in place: there may instead be an agreed industry code of practice. It tends to work most effectively when industry incentives are aligned with the interests of consumers. We will consider the use of self-regulation when this alignment of interests can be clearly demonstrated. Co-regulation is where industry and the regulator work together to combine elements of self-regulation with some regulatory oversight of the legislative powers in this area. We will seek to use co-regulation where industry and/or industry organisations are willing and able to work in partnership with us and agreement can be reached on the split of responsibilities.
- 1.17 Requesting information – we may request information from businesses to assist us in considering whether enforcement action is required and we will normally initially ask businesses to provide this information informally. We will only expect to use our formal legal powers to obtain information where businesses are unwilling to provide the information informally. If businesses fail to provide the information requested using our legal powers, we are able to seek an Enforcement Order from the Court pursuant to paragraph 16 of Schedule 5 to the Consumer Rights Act 2015 (CRA15). We may also request information (e.g. data or documents) from one or more businesses in order to check compliance (and the consistency of that compliance across the market), or better to understand a broader aspect of the market.
- 1.18 We will treat information provided in response to our legal powers by businesses in accordance with obligations set down in paragraph 16 of Schedule 5 to CRA15 and Part 9 EA02. Paragraph 17 of Schedule 5 to CRA15 states that information provided in response to the use of these powers cannot be used in any criminal proceedings and Part 9 EA02 prevents enforcers from sharing information obtained from businesses without their consent, save for limited exceptions.
- 1.19 Where we receive a request for disclosure of information which has been obtained by us, we will normally ask the business to which the information relates to confirm whether they consider any of the information provided informally or under paragraph 16 of Schedule 5 to CRA15 to be confidential, why they consider this to be the case and the harm that could be caused by disclosure. It will ultimately be for the CAA to determine whether it is appropriate to disclose the information. Further details on disclosure of information are set out in Appendix B.

- 1.20 Inspections – we will not routinely carry out inspections using our legal powers, but would consider using them when it appears to us to be the only way to gain access to information at business premises. We expect to use these powers in very rare circumstances. We will more usually carry out informal visits to check business practices such as provision of consumer information or service provision at airports.
- 1.21 Warning letters – if we are unable to resolve an issue following the provision of advice and guidance, we will use informal warning letters to set out the specific requirements on a business of a piece of legislation and / or explain the steps a business needs to take in order to comply.
- 1.22 Undertakings – we may seek an undertaking from a business to move into compliance with the law and/or to commit to enhanced consumers measures which ensure future compliance, improve consumers' ability to make an informed choice or deliver financial redress where there has been financial loss. We will normally reach this stage after a period of consultation with the business, having provided advice and guidance, having reviewed any requested information and after an initial warning letter.
- 1.23 Enforcement orders and criminal proceedings – for the most serious breaches, we can seek an Enforcement Order from the Court under Part 8 EA02. We can also seek Enforcement Orders under The Civil Aviation (Access for Disabled Persons and Persons of Reduced Mobility) Regulations 2014 and The Operation of Air Services in the Community (Pricing etc) Regulations 2013. We can also pursue criminal sanctions through the Courts.

## **Prioritisation**

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- 1.24 In choosing where to target our action we will consider our prioritisation principles (CAP 1233).

## **Process**

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- 1.25 The CAA will consider evidence available to it from passenger complaints, other third parties, or information published or otherwise made available to it by the business(es) in question. It will normally raise concerns about non-compliance informally with the business and seek their commitment to resolve the issue. Initial contact may be by telephone, e-mail or letter and a meeting will often be arranged to discuss the issue in more detail.

- 1.26 If it is not possible to resolve the issue informally, the CAA may formally request information from the business using its powers under Part 8 EA02 as set down in Schedule 5 of CRA15. Following consideration of the information, it may request the business sign an undertaking that it will comply with the legislation. The undertaking may also include a specific measure or measures that would reduce the likelihood of future non-compliance, help consumers make better informed decisions and/or ensure consumers received the appropriate redress if these measures were considered just, reasonable and proportionate.
- 1.27 Where businesses refuse to sign an undertaking, or breaches an undertaking, the CAA may apply to the Court for an Enforcement Order under Part 8 EA02. The CAA will inform the CMA before issuing court proceedings. It will normally send draft court statements of case to the business before commencing action.
- 1.28 In some cases, the CAA also has criminal powers. Where it has the option of using different legal powers, it will commit at the commencement of a formal investigation to using either its powers under Part 8 EA02, or its criminal powers. Once it has communicated its decision to the business, it will not move between the different approaches.
- 1.29 We will also aim to measure outcomes to demonstrate the impact of enforcement action. This may include how a business has changed its behaviour following action and moved into compliance, providing benefits for consumers. We will also take follow-up action on undertakings or enforcement orders to ensure we can assess whether a business has changed its behaviour.

## **Expedited Process**

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- 1.30 In some cases, there will be urgent issues that require a different response. These cases are likely to be of an unusual nature and related to a specific incident and business. With these types of events, there is a risk that statements made by the business in the media or on its website can mislead consumers and exacerbate consumer harm by deterring consumers from seeking access to their rights.
- 1.31 To mitigate the potential for consumer harm in such cases, the CAA will follow an expedited process:
- As soon as the CAA becomes aware of the issue, it will first engage with the business to agree upon the information and advice that the business intends to give to affected consumers.

- The CAA recognises the importance of providing affected consumers with clear and accurate information during, and immediately after, such an event and, therefore, it commits to working closely with businesses during this period, with a view to reaching agreement within the first 24 hours of the event.
- For the second stage of the expedited process, within seven days of the start of the event, the affected business will be required to present to the CAA its proposal for how it intends to deal with any subsequent complaints from affected consumers. If the CAA considers the proposed approach is not consistent with the relevant legal obligations, it will explain its view and allow the business a further seven days to make a final proposal
- If the CAA is unable to resolve the issue satisfactorily, or if the business in question does not engage constructively with the CAA within the expedited process, we will consider taking enforcement action. We will also consider making a public statement setting out our view on what the law requires so that consumers are not misled and can take their own private action if they wish to do so.

## Communication

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- 1.32 We will aim to be transparent about the reasons why we are taking enforcement action and will provide information to any business being investigated about the process. This will include details of:
- the business activity or practice causing concern;
  - the legislation we believe is being breached;
  - an invitation to open dialogue with us;
  - an explanation of the next steps, including timescales and the possible consequences of failure to respond;
  - the risks we have identified which we believe make enforcement action necessary;
  - contact details for the CAA's Case Manager and Case Officer; and
  - information on any right to appeal following the outcome of enforcement action.
- 1.33 We will normally continue to communicate with the business throughout the investigation. However, in some cases, it will not be appropriate as it

may prejudice the investigation. Where we are proposing to include an enhanced consumer measure in an undertaking, we will invite the business to propose alternative measures for our consideration.

## Publication of Actions

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- 1.34 We will publish our enforcement actions in accordance with the CAA Regulatory Enforcement Policy and the expedited process set out at paragraphs 1.28-1.29 above. In addition, we will normally publish information about Enforcement Orders at the time they are issued by the Court, and will abide by any obligations imposed by the Court.
- 1.35 We will aim to be as transparent as possible about our enforcement work. We will publish the results and details of any enforcement action taken, including:
- details of compliance undertakings,
  - details of action in the High Court to obtain Enforcement Orders, and
  - Criminal court action.
- 1.36 As well as publishing information on our website, we will also consider more widespread publicity (e.g. issuing press notices or holding press briefings) about our enforcement work. This could draw attention to the need to comply with legal requirements, or deter anyone tempted to disregard their obligations under any of the legal provisions for which we are responsible.
- 1.37 We will publish information when businesses have returned to compliance; this will normally be done following a period of monitoring to ensure continued compliance.
- 1.38 We will also publish compliance reports, based on specific aspects of consumer law, setting out the business's own assessments of compliance and their processes for ensuring compliance.

## Appeals / Challenge

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- 1.39 We operate a complaints procedure that allows stakeholders to provide feedback and comments regarding the activities of our case officers. Complaints and comments should initially be addressed to Matthew Buffey, Head of Consumer Enforcement at [regulatorypolicy@caa.co.uk](mailto:regulatorypolicy@caa.co.uk).

Where appropriate, complaints about the CAA can be escalated using the complaints process detailed on our website<sup>2</sup>.

## Scenarios

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- 1.40 The following scenarios have been used to illustrate how the enforcement process works in practice and the types of actions that we may take.

### Delayed and cancelled flights

- 1.41 The CAA received a number of complaints about an airline which was failing to respond to passengers and which also failed to respond to the CAA. The detail of the complaints identified possible noncompliance and the failure to respond resulted in this case being prioritised. We wrote to the airline setting out our concerns and requested a meeting to discuss the situation. We met the airline and discussed the process they had in place to deal with passenger complaints. Due to a restructure, the timescales for handling complaints had been significantly affected and some were not being redirected. The airline agreed it needed to put steps in place to improve performance and we obtained written commitments from them. The case was resolved informally and we continue to monitor the timescales for responding to passengers and the CAA.
- 1.42 If we had been unable to resolve the issue informally, the CAA would have commenced formal consultation with the business under Part 8 EA02. This would have involved requesting the business to sign a legal undertaking that it would comply with the law. Failure to sign the undertaking would have resulted in the CAA taking action in the High Court to obtain an Enforcement Order.

### Price Transparency

- 1.43 New legislation came into force which required businesses to advertise flight prices inclusive of all unavoidable taxes, fees and charges and to ensure extras were not pre-selected. We wrote to all airlines flying from the UK providing advice on the obligations. We then commenced a project looking in detail at the websites of the top 20 airlines flying from the UK. We wrote to each of the top 20 setting out the changes that we considered needed to be made to comply, along with a deadline for compliance. We met with a number of the airlines to discuss the requirements in more detail and obtained written commitments from the majority to make the necessary changes. There were a small number of airlines who failed to

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<sup>2</sup> <http://www.caa.co.uk/Our-Work/Make-a-report-or-complaint/CAA-complaints-policy/>

provide the required commitments and we took formal action, obtaining undertakings under Part 8 EA02<sup>3</sup>. We carry out quarterly monitoring of the top 20 airline websites to check compliance.

## Reduced Mobility Passengers

- 1.44 The CAA received a complaint from an airline that some airports had not put in place the necessary arrangements to assist passengers travelling with assistance dogs. We carried out a survey of UK airports to check what steps had been taken and to identify any airports who were failing to comply. We identified a number of airports that were unable to accept assistance dogs and wrote to them informally requesting their confirmation of the actions they were taking to move into compliance. We also worked with other agencies such as the Department for Transport, DEFRA and Animal Health to assist in simplifying the approvals for accepting animals. Nearly all of the airports have now taken the necessary steps to obtain approval. We will monitor compliance levels.
- 1.45 If we had been unable to resolve this issue informally, we would have considered taking formal action using our powers under The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014. This would have involved requesting the business to sign a legal undertaking that it would comply with the law. Failure to sign the undertaking would have resulted in the CAA taking action in the High Court to obtain an Enforcement Order.

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<sup>3</sup> We would now take action using our powers under The Operation of Air Services in the Community (Pricing etc) Regulations 2013



## Appendix A

## Consumer Legislation enforced by CAA

- A.1 The CAA enforces consumer law that applies specifically to the aviation sector and can also enforce general consumer law that falls under Part 8 EA02. The sanctions available to the CAA include criminal sanctions, civil sanctions contained in Part 8 EA02 and civil powers based on, but not directly derived from, Part 8 EA02.
- A.2 Where we enforce legislation with powers based on Part 8 EA02 but where the power comes directly from the specific legislation, revisions brought about by the Consumer Rights Act 2015 (CRA15) to EA02 do not apply. For example we will not seek the use of enhanced consumer measures when taking action under that legislation.
- A.3 Where we have both criminal and civil powers, we will consider which course of action is the most proportionate. In many cases, this will mean that we are likely to use the powers we have under Part 8 EA02 or equivalent powers in order to ensure compliance.

Legislation	Criminal Sanctions	Part 8 EA02
Regulation EC 1107/2006 Access to air travel for disabled and reduced mobility passengers	N/A	<u>No. Civil Powers based on Part 8 EA02<sup>4</sup></u>
Regulation EC 2111/2005 Informing passengers of the identity of their airline	£1,000 to £5,000 fine	Yes
Regulation EC 261/2004 Rights to compensation and assistance for denied boarding, cancellation and long delays	£5,000 fine	Yes
Regulation EC 1008/2008 – Article 23 Transparent pricing	N/A	<u>No. Civil Powers based on Part 8 EA02<sup>5</sup></u>

<sup>4</sup> Our powers come from The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 and are based on Part 8 of the Enterprise Act 2002

<sup>5</sup> Our powers come from The Operation of Air Services in the Community (Pricing etc.) Regulations 2013 and are based on Part 8 of the Enterprise Act 2002



The Electronic Commerce (EC Directive) Regulations 2002	N/A	Yes
Consumer Protection from Unfair Trading Regulations 2008	N/A	Yes
The Package Travel, Package Holiday and Package Tours Regulations 1992	N/A	Yes
The Consumer Rights (Payment Surcharges) Regulations 2012	N/A	Yes
Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013	N/A	Yes
Regulation EC2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws	Cross border enforcement of EC261 and CPRs	
<u>Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015</u>	<u>N/A</u>	<u>Yes</u>
<u>Consumer Rights Act 2015 (including Part 2 Unfair Terms)</u> <sup>6</sup>	<u>N/A</u>	<u>Yes</u>

## Criminal Sanctions

- A.4 When the CAA takes forward a criminal prosecution, it will do so in accordance with the Code for Crown Prosecutors.

## Part 8 of the Enterprise Act

- A.5 The CAA, along with other UK authorities, is a designated enforcer under Part 8 EA02. When investigating a potential infringement, we will notify the CMA to ensure that the best placed authority takes enforcement action. Where we use our powers under EA02, we will do so in accordance with the CMA Guidance on Part 8 EA02.
- A.6 Part 8 EA02 applies to two types of infringements: 'domestic infringements' (breaches of UK legislation) and 'Community or EU infringements' (breaches of European legislation listed in Schedule 13 of EA02). It applies only to an infringement which harms the collective interests of consumers, it does not provide for individual redress.

<sup>6</sup> More detail on the application of the CRA 15 in aviation will be available Spring 2016

- A.7 Schedule 7 of CRA15 amends the EA02 to allow enforcers to impose enhanced consumer measures when seeking undertakings from businesses. Measures can be proposed that ensure future compliance, improve consumers' ability to make an informed choice or deliver financial redress where there has been financial loss. The enforcer must only impose such measures where it considers them to be just and reasonable, with particular consideration of whether the measures are proportionate. When considering financial measures, the benefit to consumers must outweigh the cost of delivering redress.

## Powers

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- A.8 Information Notice – we can issue a formal request for information to assist us in considering whether to take enforcement action. Where we use this power, we will issue a notice to the business detailing the information we require and the purpose for the request. It may also require that a business implements a measure that falls within the definition of an 'enhanced consumer measure' where the CAA feels that this is just, reasonable and proportionate.
- A.9 Consultation - we will generally consult first with a business to seek compliance. This may lead to a resolution by way of informal assurances as to future conduct.
- A.10 Undertakings - we may consider obtaining a formal undertaking from the business to comply with the law. The undertaking will relate to the specific aspects of the case and will require that the business does not commence, continue or repeat the conduct which constitutes, or would constitute, an infringement.
- A.11 Enforcement Order - if a business fails to respond to a formal information request, is unwilling to provide undertakings, or breaches an undertaking, we may apply to the Court for an Enforcement Order under Part 8 EA02, and will notify the CMA before we do so. We will consult with businesses for a minimum of 14 days (when we seek an Enforcement Order) or a minimum of 7 days (when we seek an Interim Enforcement Order).
- A.12 Undertaking sought in Court - in very urgent cases, an immediate application can be made to the Court without prior consultation of the business where we are seeking an Undertaking to the Court. In some cases the Court may accept an undertaking from a business, rather than making an Enforcement Order and may require the undertaking to be published.

- A.13 Contempt of Court - we may also make an application without prior consultation where we are initiating contempt of court proceedings. Breach of an undertaking imposed and accepted by the Court or breach of an Enforcement Order could result in contempt of court proceedings and may lead to a fine, seizure of assets, and in very serious cases, imprisonment.

## **Inspection Powers**

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- A.14 Schedule 5 to CRA15 also provides EU enforcers powers of inspection and allows us to enter premises with or without a warrant. These powers were originally introduced in 2006 when the EA02 was amended to provide inspection powers for domestic breaches. This brought the powers in line with those introduced for cross-border offences under the Regulation (EC) No. 2006/2004 on Consumer Protection Cooperation (the “CPC Regulation”).
- A.15 We will normally give at least two working days’ notice of our intention to enter premises without a warrant, unless it has not been possible to serve such a notice, despite all reasonable efforts to do so. Where it is not possible to serve the notice in advance, we will produce the notice when the premises are entered.
- A.16 We will seek to obtain a warrant in cases where we consider there are reasonable grounds for believing that entry would be refused or documents would be concealed or interfered with.

## **The Consumer Protection Co-operation Regulation**

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- A.17 The CAA is a competent authority under the CPC Regulation which encourages co-operation between competent authorities across the European Union. The CAA is a competent authority for the purposes of the Denied Boarding Regulations<sup>7</sup> and the EC Directive 2005/29/EC on Unfair Commercial Practices in the context of aviation. The CMA acts as the Single Liaison Office in the UK and is responsible for liaison with UK enforcers and the European Commission.
- A.18 The CPC Regulation provides competent authorities across Europe with enforcement powers to tackle cross border infringements. Enforcers have the powers to request action be taken against a business based in one Member State that harms consumers in other Member States. Enforcers

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<sup>7</sup> Regulation (EC) No, 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

also have a duty to take enforcement action where a case is referred to them, if their investigation shows there has been an infringement that harms the collective interests of consumers.

## **The CAA's Public Sector Equalities Duty**

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- A.19 The Equality Act 2010 (EA10) places an obligation on the public sector to have regard to certain aims when exercising its functions. These include the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the EA10, to advance equality of opportunity between those with protected characteristics and those without, and to foster good relations between those with protected characteristics and those without.
- A.20 Issues of accessibility for disabled persons or persons with reduced mobility are covered by Regulation 1107/2006 which the CAA enforces. Given the existence of this Regulation and other international conventions that apply to aviation, EA10 contains an exemption for air travel from the provisions for disability discriminations.

## Appendix B

## Disclosure of Information

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- B.1 The CAA gathers information from businesses as part of its enforcement work. Sometimes the information is provided informally and at other times the CAA will make a formal request<sup>8</sup> using its powers under Schedule 5 of CRA15. This information is requested to allow the CAA to consider whether enforcement action is required, to check compliance of an individual business or to assess compliance across a range of businesses.
- B.2 The CAA is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and any requests made for disclosure of information must be considered by the CAA. Where information has been provided by businesses informally, the CAA will seek consent from the business before disclosing that information. If the business does not provide consent, it is for the CAA to consider whether any appropriate exemptions to disclosure apply under FOIA.
- B.3 Information provided under Schedule 5 of CRA15 will usually be exempt from disclosure under Section 44 of FOIA as it will be subject to the restrictions set down in Part 9 EA02 (and as amended by Schedule 6 of CRA15). Disclosure may, however, be permitted under one of the 'information gateways' set down in Part 9 EA02.

### **Information provided under Schedule 5 of CRA15**

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- B.4 Where the CAA specifies information which it requires in order to consider whether to exercise its statutory functions under Schedule 5 of CRA15, disclosure of that information will be subject to the restrictions set down in Part 9 EA02. Part 9 EA02 imposes a general restriction on the disclosure of 'specified information' to other persons.
- B.5 The restriction on disclosure applies during the lifetime of an individual or while a business remains in existence. Disclosure can only be made if it is permitted by one of the following 'information gateways' set down in Part 9 EA02. These are:
- the CAA obtains the required consents (section 239 of the EA02);

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<sup>8</sup> Section 225

- the disclosure is required for the purpose of a European obligation (section 240 of the EA02);
- the disclosure is made for the purpose of facilitating the exercise by the CAA of any of its statutory functions (section 241(1) of the EA02);
- the information is disclosed to another public authority in the UK for the purpose of facilitating the exercise by that authority of its functions under the EA02 and/or the legislation set out in Schedule 15 of the EA02 (under section 241(3) of the EA02);
- the information is disclosed to any person (after the CAA satisfies itself that the disclosure is proportionate to what is sought to be achieved by it) (under section 242(3) of the EA02):
  - in connection with the investigation of any criminal offence in any part of the UK;
  - for the purposes of any criminal proceedings there; or
  - for the purpose of any decision whether to start or bring to an end such an investigation or proceedings; or
- the disclosure is to facilitate the performance of an overseas public authority's functions (under section 243 of the EA02).

B.6 The CAA may also disclose (under section 241A of the EA02) specified information which relates to either the affairs of an individual or any business of an undertaking to any person for the purposes of:

- actual or prospective civil proceedings in the UK or elsewhere;
- obtaining legal advice in relation to such proceedings; or
- establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.

B.7 Where the CAA discloses information to a person, there are restrictions on how that information must be treated and this will depend on whether there is a relevant information gateway for disclosure of information in those circumstances. It is a criminal offence for a person to disclose information in circumstances where such disclosure is not permitted under Part 9 EA02, where a person contravenes a direction under section 243(4) of the EA02 not to do so, or where a person uses the information disclosed to him for a purpose not permitted under Part 9 EA02.

## CAA Process for considering disclosure

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- B.8 If the CAA is considering disclosing information it will normally seek the consent of the person to whom the information relates, unless a specific information gateway applies where such consent is not required before disclosure is made
- B.9 Even when an information gateway applies, the CAA is required to have regard to certain considerations before making a disclosure. In particular, the CAA must have regard to the three considerations set out in section 244 of the EA02, namely:
- the need to exclude from disclosure (so far as it is practicable to do so) any information whose disclosure the CAA considers to be contrary to the public interest;
  - the need to exclude from disclosure (so far as practicable):
    - commercial information the CAA considers might significantly harm the legitimate business interests of the undertakings; or
    - information relating to the private affairs of an individual which the authority thinks might significantly harm that individual's interests; and
  - the extent to which the disclosure of information relating to the private affairs of an individual or commercial information is necessary for the purpose for which the authority is permitted to make the disclosure.
- B.10 These three considerations are applied by the CAA on a case-by-case basis when the CAA is considering disclosure of specified information.