

Department for Infrastructure (DFI)

Guidance and Administrative Framework for Monitoring of Delayed Aircraft after 9.30pm at George Best Belfast City (GBBCA)

1 November 2018

The 2008 Planning Agreement (PA)

1. Paragraph 1.1 of Part II (The Restrictions) of the First Schedule of the Planning Agreement (PA) states that;

“No Scheduled Aircraft except Delayed Aircraft shall use the Aerodrome during Prohibited Hours”.

Paragraph 1.2 states that:

“No Delayed Aircraft shall use the Aerodrome except during Permitted Hours or Extended Hours”.

Permitted Hours means between the hours of 6.30 am and 9.30pm and prohibited hours means between the hours of 9.31pm and 6.29am. Extended hours means between the hours of 9.31pm and 11.59pm.

Paragraph 1 of Part III (Obligations) of the First Schedule of the PA includes the following obligation:

“Only in exceptional circumstances to permit Delayed Aircraft to use the Aerodrome during the Extended Hours”.

2. Controversy has surrounded the term “exceptional circumstances” and its meaning and application within the PA. A recent Ombudsman investigation into the issue focused on the Department's lack of procedures and scrutiny around the obligation which can only be enforced via the courts.
3. Following the public inquiry into a proposed modification of the PA in May 2015 and the recommendations put forward by the Planning Appeals Commission (PAC), the obligation will be strengthened and its application made more transparent in the new forthcoming modified agreement through the following measures:
 - a) As recommended by the PAC, the new modified Agreement will set out clearly a level of fines on flights landing after 9.30pm, increasing incrementally every 15 minutes. In addition, the level of fines overall will be higher than previously imposed as part of the GBBCA's voluntary scheme to provide further incentive for compliance.

- b) GBBCA will be required to submit a bi-monthly written report listing the delayed flights and the circumstances for the delay in sufficient detail to enable the Department to assess compliance. Written details of every delayed aircraft will also be contained within the Annual Performance Report to be submitted annually on 31 March.

- c) Guidance (see below) has been produced to provide more transparency to the local community by explaining how the Department will interpret and monitor GBBCA's compliance with this aspect of the PA. The Department would intend to use this published guidance as part of the monitoring regime for the existing 2008 agreement and the new agreement once modified. A revised edition of this guidance will be published once the modified agreement is signed.

Guidance on Exceptional Circumstances

- 4. The purpose of this guidance is to provide more transparency as to how the Department will interpret and monitor GBBCA's compliance with this aspect of the PA. In everyday language, the term "exceptional" is defined as unusual, atypical or out of the ordinary. A circumstance is a fact or condition connected with or relevant to an event or action.

- 5. For the purposes of the PA, the term "exceptional circumstances" has and will continue to be construed by the Department by reference to the applicable planning context and particular circumstances.

- 6. In interpreting which flights meet the exceptional circumstances criterion, it is important to remember that flights after permitted hours can be particularly disturbing to the surrounding community. The way in which a regional airport operates also needs to be recognised as does the travel disruption which would ensue if an aircraft was refused landing. The obligation around delayed flights is also part of a wider planning agreement which exists primarily to control environmental noise and to limit the impact on the living conditions of nearby residents.

- 7. Contrary to arguments that have been made previously, the Department does not consider the term "exceptional circumstances" to be the same as the term "extraordinary circumstances" on which there has been European Court rulings in relation to payments of compensation to passengers.

8. The majority of aircraft operating at GBBCA are rotational aircraft which means that they may have already flown a number of different routes and any delays earlier in the day may result in a knock on effect. It is therefore important to seek to understand the nature of the original delay to assess whether exceptional circumstances are at the root cause of the delay. However it may not always be possible to ascertain the cause of the original delay particularly when aircrafts can fly up to eight sectors during the day across UK and European destinations.
9. It is understood that it is not in the interests of the GBBCA to incur delays and that passenger safety is the primary consideration. The applicable standard is therefore whether GBBCA could have foreseen and prevented the delay. As such, factors which are within GBBCA's direct control, such as internal industrial action or gate/stand availability at GBBCA will not normally be considered exceptional.
10. Delays which are not caused by, or which are outside the direct control of GBBCA themselves, may meet the "exceptional circumstances" test. Also delays due to mechanical or technical issues, as well as external events such as the effects of the weather including runway and aircraft de-icing, are material reasons which will be considered exceptional regardless of how often they occur.
11. Whereas many delays will fall outside GBBCA's direct control, some delays may be preventable by the airlines themselves. The Department will seek evidence that GBBCA are continuing to monitor trends and causes of late flights to detect recurrent offenders or particular routes which appear to experience regular delays, and will expect GBBCA to work with the airlines to seek a reduction in these delays.
12. In monitoring compliance with this obligation, the Department will expect GBBCA in so far as possible to provide adequate information to enable it to understand the nature of the original delay and to determine whether these factors were outside GBBCA's control. It is acknowledged that this approach monitors compliance retrospectively i.e. the Department receives extensions log information every two months but the flights recorded have already occurred after permitted hours. GBBCA should not permit late flights which do not meet the exceptional circumstances criteria as set out in this guidance. It is therefore crucial that the reasons for delayed flights are continuously monitored and analysed by GBBCA

and effective action taken to reverse any upward trends through all available means.

13. The Noise Monitoring Report to be submitted by GBBCA annually on 31 March under the new modified PA will contain a record of all delayed aircraft using the aerodrome within the extended hours, penalties administered by the Company and payments to the Community Fund in line with the scheme contained within the modified PA. It will also provide written details of the circumstances for any aircraft using the aerodrome during extended hours in sufficient detail to permit the Department to assess compliance with the respective covenants in the modified PA including description of any trends and the action taken, or proposed to be taken by GBBCA to minimise the use of the aerodrome by delayed flights during extended hours. The Department will publish that report on its website at www.planningni.gov.uk.

Administrative Framework

14. To ensure a consistent and transparent approach in monitoring compliance with the relevant clauses within the PA, the Department has formulated a protocol to include guidance to staff on the submission of documents, procedures for analysing data, recording of decisions and enforcement.

Submission of documents

15. GBBCA will be expected to provide to the Department with a bi-monthly written report listing the delayed aircraft using the aerodrome outside permitted hours and the circumstances for any aircraft using the aerodrome during extended hours. These shall be expected to be provided as soon as possible following the end of the relevant calendar month and at the latest by the end of the following calendar month. For example, written reports for January and February should be submitted at some stage during the month of March. If the information is not received within these timescales, the Department will contact GBBCA and request it be submitted as soon as possible thereafter. The outstanding information should not be rolled over to the following submission.
16. The information can be received in hard copy or electronically. The written report shall take the form of a table detailing the date, Airline IATA code, time, arrival/departure, flight number, registration code, Airport IATA code, runway, IATA delay code and reason for the delay. The use of acronyms should be minimised and/or explained in full in a key. The reason for the delay should use plain English

without abbreviations. The GBBCA should seek to detail the underlying reason for the original delay if this is available and provide as much information as possible relevant to the aircraft's delay.

17. Upon receipt of the documents the Department will consider whether they provide the required level of detail and if necessary will seek further input from GBBCA. Where the Department remains dissatisfied with the information submitted, this shall be documented in the records (see below).
18. In addition to the bi-monthly submission, the Annual Performance Report (to be required by the modified Planning Agreement) shall contain the information above for the preceding calendar year. The GBBCA should also provide evidence of its ongoing efforts to reduce late flights, such as records of discussions with airlines regarding persistent late flights or problematic routes and any solutions or agreements which were reached. The Department may also request such evidence from time to time if it has not already been forthcoming to assist in its monitoring decisions.

Analysis of Information Submitted

19. The information provided shall be scrutinised by Departmental staff having regard to the guidance stipulated above. In addition to the guidance, officers should have regard to the following factors;
 - The timing of the delayed aircraft;
 - The understanding of the reason provided; and
 - The overall numbers of late flights and monthly performance compared with the same months in previous years.
20. The Department will also have regard to the information on delayed flights submitted through the Airport Forum which includes a breakdown by half hourly time band and by airline. In addition, information on the breakdown of flights and fines administered will be available in the future through the Annual Performance Report.
21. This analysis shall be carried out within two weeks of receipt of the information and the officer shall schedule an internal meeting to review the information and determine whether any flights do not meet the terms of the PA. At least three

members of staff shall attend the meeting and sign off on the Department's decision.

Record of Decisions

22. The bi-monthly information submitted by GBBCA and the record of the Department's decisions will be recorded and filed appropriately in hard copy and in TRIM. A checklist and record sheet has been compiled so that compliance with the late flights clauses can be checked and recorded consistently. This sheet is attached at Annex 1.
23. Officers from the Department's Strategic Planning Directorate will meet on a regular basis to assess the information provided, to check ongoing compliance and consider whether any action is necessary. The decision as to whether GBBCA has complied with the relevant clauses of the PA and the need for any further action will be at the discretion of the group. The Department may decide to seek further information or clarification from the GBBCA before reaching a decision. GBBCA will be expected to respond to these requests in a timely fashion.
24. The Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR) establish general public rights of access to recorded information held by public authorities. Officers are aware of the legislation and any requests for information held shall be reviewed on a case by case basis. In addition, the Department will respond to general queries from the public or the GBBCA on any flight or issue related to the late flights clauses within the PA within 21 calendar days.

Enforcement

25. The planning agreement is enforceable through injunction only and any breach of the obligations therein requires consideration of this option. However the Department will engage with the GBBCA regarding any concerns it has regarding delayed flights and compliance with the planning agreement. It is intended that an open line of communication will be maintained between the parties to the agreement so that concerns can be addressed at the earliest opportunity. In determining the most appropriate course of action in response to any possible breach of the PA, the Department will take into account the extent and nature of the breach and its potential impact. It will also have regard to the potential impact of any legal action through the Courts.

Continuous review

26. The Department will keep this guidance and administrative framework under continuous review and will revise the document where necessary and upon execution of the modified PA. Any new members of staff involved in monitoring compliance with the PA will be suitably trained and briefed. The guidance/framework will be published on the Department's website.

Annex 1 - Record of Decision on Delayed Aircraft after 9.30pm

Date Information Supplied: _____

Months Covered: _____

Was information adequate to assess compliance?

Was any clarification required?

Consideration of Reasons for Delayed Aircraft

Types of reasons

Do these reasons meet the exceptional circumstances test and the Department guidance?

Is there a need for further action?

Signed: 1. _____

2. _____

3. _____

Date: _____