EXPLANATORY MEMORANDUM TO
THE AERODROMES (DESIGNATION) (CHARGEABLE AIR SERVICES) (REVOCATION) ORDER 2009

2009 No. 189

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Instrument concludes the implementation of the Government's decision of 24th July 2007 to end the direct charging of aircraft operators by NATS Services Limited (NSL) for air navigation services at six BAA Limited (BAA)'s airports.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Following consultation in 2007, the Government announced its decision to end direct charging of aircraft operators by NSL for air navigation services at London Heathrow, London Gatwick, London Stansted, Aberdeen (Dyce), Edinburgh and Glasgow.

4.2 The Aerodromes (Designation) (Chargeable Air Services) (Amendment) Order 2008 (S.I.2008/518) removed London Heathrow, London Gatwick and London Stansted from the list of airports designated for the purposes of section 77(3)(b) of the Transport Act 2000 on 1 April 2008, thereby ending the direct charging of aircraft operators by NSL for air navigation services at these airports.

4.3 At Aberdeen (Dyce), Edinburgh and Glasgow airports, however, ending direct charging on 1 April 2008 would have adversely affected NSL's ability to recover from aircraft operators amounts due under existing contracts for air navigation services with BAA. It was decided, therefore, to defer the end of direct charging of aircraft operators for air navigation services at these airports until a contractual mechanism had been agreed by NSL and BAA for the recovery of the sums due.

4.4 This Order revokes the Aerodromes (Designation) (Chargeable Air Services) Order 2001 and S.I. 2008/518 which amended it.

5. Territorial Extent and Application

5.1 This Instrument applies to all of the United Kingdom but, in practice, will only affect the three aerodromes designated for the purposes of section 77(3)(b) of the Transport Act 2000 in Scotland.

6. European Convention on Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 At Aberdeen (Dyce), Edinburgh and Glasgow airports, BAA negotiates the contract for air navigation services with NSL. However, NSL charges airlines directly for the service, not BAA. Therefore, the cost of air navigation services is not reflected in BAA's airport charges. Furthermore,

the Civil Aviation Authority (CAA) has a formal function in the process, whereby they have to specify the charges that NSL may levy. This practice is termed "direct charging" and is inconsistent with the position at other airports in the UK where airlines are not charged directly by the air navigation service provider. Nor does the CAA have a function in specifying charges for air navigation services. Instead, airports may reflect air navigation services costs in their airport charges.

7.2 The Government believes that airports generally have a stronger interest in the cost of air navigation services they procure when they have to pay the provider direct and seek to recover the cost from airlines. The decision to end direct charging by NSL is designed, therefore, to provide a stronger incentive to ensure that price and service considerations are weighed up together in the negotiations for air navigation services provision. The net effect will be to bring charging practices at BAA's Scottish airports in to line with other airports in the UK, where the airports may reflect air navigation services costs in their airport charges, and where the CAA does not have a function to specify specific charges for air navigation services.

7.3 The Aerodromes (Designation) (Chargeable Air Services) (Amendment) Order 2008 (SI 518/2008) ended direct charging by NSL at London Heathrow, London Gatwick and London Stansted on 1 April 2008. This instrument ends direct charging by NSL at BAA's three Scottish airports on 1 April 2009 with the consequence that there will no longer be any aerodromes in the UK designated for the purposes of direct charging.

8. Consultation Outcome

8.1 In 2002, at the Secretary of State's request, the Civil Aviation Authority (CAA) consulted NSL, users of airport air traffic services and airports on three options: extend direct charging to all UK airports; discontinue direct charging at the six BAA airports; or discontinue direct charging for airport air navigation services but continue it for the London Terminal Approach service under the NATS En Route Plc Licence.

8.2 The CAA received responses from NATS, BAA, and five other UK airports, Virgin Atlantic, IATA and British Airways. Only BAA expressed a clear preference for retaining direct charging, but added that if the decision was taken to end direct charging it should not be implemented before 2008 as it was too late to take account of it in the airports' quinquennial 5 year price cap review for 2003-2008. None of the users favoured the continuation of direct charging. Airport respondents other than BAA opposed the introduction of direct charging for air navigation services at their airports. Only Virgin Atlantic gave explicit support to the continuation of direct charging for the London Terminal Approach services. NATS argued that this issue should be addressed as part of a wider and longer term consideration of a possible future separate London Terminal Area charge.

8.3. Taking into account respondents' views, the CAA advised the Government in November 2002 that direct charging should be discontinued but the implementation of any such decision should be deferred until the designated London airports' price caps were re-set in 2008.

8.4. The CAA also concluded that charging for the London Approach Service should not be incorporated within en-route charges nor should it form part of airport charges.

8.5 The Department for Transport launched a further formal consultation on 5 February 2007, to validate the results of the 2002 consultation. The consultation paper and partial regulatory impact assessment were issued to a range of aviation stakeholders including the CAA, NATS, BAA, other airport operators, airlines, representative organisations of airports, air traffic controllers, General Aviation and pilots. The Scottish Executive was also consulted. The Consultation closed on 30 April 2007.

8.6. The Department for Transport consulted on 4 options: Option A - do nothing, Option B - end direct charging for both aerodrome and approach services for the six airports, Option C - end direct

charging at the six airports save for the London Terminal Approach services, and include the recovery of this in the Eurocontrol route charging system as far as possible, and Option D- end direct charging at the six airports but retain direct charging for the separate London Terminal Approach services under the existing NATS En Route Plc Licence.

8.7. The consultation elicited 11 responses[1]. BA, Virgin, IATA, Manchester Airport Group, HIAL, NATS, CAA and BBGA all supported reform, and most favoured Option D. Two respondents objected to ending direct charging. BAA objected to the burden of recovering costs from airlines transferring from NSL to them and they also felt they were already able to secure a very competitive price for air navigation service provision under the current arrangements. BMI were concerned that the removal of direct charging might result in BAA changing the basis on which air navigation services charges are calculated to the detriment of short haul operators. BMI also liked the direct contact with the service provider. A further respondent, Easyjet, found it hard to make a decision based on the evidence provided. On 24 July 2007, the Government announced its decision to follow Option D.

9. Guidance

9.1 No formal guidance is planned or necessary. However, the decision to end direct charging for air navigation services at BAA's three Scottish airports on 1 April 2009 has been communicated to those affected by it and will be published on the Department for Transport's website.

10. Impact

-

10.1 This Instrument will have a direct impact on BAA (the owner of Aberdeen (Dyce), Edinburgh and Glasgow airports) and NSL. This Instrument will transfer responsibility for billing airlines for air navigation services from NSL to BAA. The Instrument may also impact on airlines using these airports if BAA decides to change the methodology for calculating charges for air navigation services. However, BAA have indicated that they are minded to retain a pricing structure closely based on NSL's. It should be noted, however, that due to lower than forecast traffic last year and further reductions in traffic forecast for 2009, BAA would need to increase charges substantially from 1 April 2009 to recover in full their contractual costs with NSL. However, airlines would be facing these increases regardless of whether they were charged by NSL directly or BAA. They are not a consequence of this Instrument.

10.2 The impact on the public sector will be to remove from the CAA its function of specifying NSL's charges for air navigation services at Aberdeen (Dyce), Edinburgh and Glasgow airports from 1 April 2009.

10.3 A final Impact Assessment dated 22 February 2008 was attached to the Explanatory Memorandum to the Aerodromes (Designation) (Chargeable Air Services) (Amendment) Order 2008 (S.I. 2008/518) which ended direct charging at BAA's three London airports on 1 April 2008. The figures in that IA remain the same and therefore it is annexed to this EM for information.

11. Regulating small business

11.1 This Instrument does not apply to small businesses.

12. Monitoring and Review

[1] British Airways (BA), BAA Ltd, British Business and General Aviation Association (BBGA), BMI, Civil Aviation Authority, Easyjet, Highlands and Islands Airports Ltd (HIAL), International Air Transport Association (IATA), Manchester Airports Group (MAG), NATS and Virgin Atlantic (Virgin).

12.1 The aim of ending direct charging of aircraft operators for air navigation services is to create a level playing field for airports in the UK. It will also provide a stronger incentive to ensure that price and service considerations are weighed up in the negotiations for air navigation services provision. The Department for Transport currently intends to evaluate this policy 5 years after implementation to assess the impacts.

13. Contact

Jeremy Ketley at the Department for Transport Telephone number 0207 944 5114 or e-mail: Jeremy.ketley@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options		
Department /Agency: **Department for Transport**	Title: **Impact Assessment of ending Direct Charging at 6 BAA Airports**	
Stage: Post Consultation	**Version: Post Consultation**	**Date 22nd February 2008**
Related Publications: Consultation Document "Ending Direct Charging for Air Navigation Services at Six BAA Airports"		

Available to view or download at:

Contact for enquiries: Jeremy Ketley **Telephone: 020 7944 5114**

See Paragraph 7.1 of the Explanatory Memorandum above.

Government intervention is necessary because the existing arrangements ('direct charging' of airlines by NATS Services Limited (NSL) for air navigation services at six BAA airports) are given legal effect by the designation of the six BAA airports for the purposes of sub-section (3) (b) of Section 77 (Chargeable Air Services) of the Transport Act 2000. This was given effect by SI/2001/354. Therefore, ending the existing arrangements can only be achieved through the revocation of this Statutory Instrument. Thus the Government must intervene to remove the existing power.

See Paragraph 7.2 of the Explanatory Memorandum above.

Four possible options are set out in the Impact Assessment. Detailed descriptions of these options can be found under Section 2 (Options Analysis). Briefly:

1. *Option A* - Continue existing charging arrangements at the six airports for both aerodrome and approach services. This is the do-nothing / base case option against which Options B, C and D are assessed.
2. *Option B* - Remove NSL's authority to levy charges on aircraft operators at all six airports for both the aerodrome and approach services.
3. *Option C* - Remove NSL's authority to levy charges on the aircraft operators at all six BAA airports for both the aerodrome and approach services. However, for London airports, the recovery of charges for the London Approach would be integrated into Eurocontrol charges. The remaining aerodrome services for each London airport would be remunerated from the airport under contract.
4. *Option D* - Remove NSL's authority to levy charges on the operators of aircraft at the three Scottish airports for aerodrome and approach services. For London airports, NATS En Route Limited (NERL) would continue direct charging for approach services. The remaining aerodrome services for each London airport would be remunerated from the airport under contract.

The policy would be evaluated five years after implementation, to assess the impacts.

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Jim Fitzpatrick 30th January 2009

Summary: Analysis & Evidence

Policy Option: A	**Description:** Continue existing charging arrangements at the six airports for both aerodrome and approach services. This is the do-nothing / base case option against which Options B, C and D are assessed against.

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	
£ 0	
Average Annual Cost (excluding one-off)	
£ unknown	**Total Cost** (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups' .

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yrs**	
£ N/A	
Average Annual Benefit (excluding one-off)	
£ N/A	**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups'

I

Price Base Year 2007	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate)

			United Kingdom	
What is the total annual cost of enforcement for these organisations?			£	
			Yes	
What is the value of the proposed offsetting measure per year?			£N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	Unknown	Unknown		

negligible

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Policy Option: B	**Description:** Remove NSL's authority to levy charges on the aircraft operators at all six airports for both the aerodrome and approach services.

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	
£ 0	
Average Annual Cost (excluding one-off)	
£ unknown	**Total Cost** (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups' Option B may lead to increase in costs for the six airports as the approach services are incorporated in their cost base, although BAA recovers these from the aircraft operators. There may also be possible increase in administrative costs for BAA due to multiple negotiations. Some airlines may face higher charges as a result of any change in pricing structures. For Scottish airports the unregulated environment may lead to possible increase in prices.

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yrs**	
£ N/A	
Average Annual Benefit (excluding one-off)	
£ N/A	**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' For Aerodrome services, possible reduction in costs for NSL due to lower billing costs in both London and Scotland. There are also benefits associated with the reduced contingent cost for government as it will no longer have to promulgate and enforce recovery of charges. Some airlines may benefit from changes in pricing structures.

Price Base Year 2007	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate)

			United Kingdom	
What is the total annual cost of enforcement for these organisations?			£	
			Yes	
What is the value of the proposed offsetting measure per year?			£N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	Unknown	Unknown		

negligible

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Policy Option: C	**Description:** Remove NSL's authority to levy charges on the aircraft operators at all six BAA airports for both the aerodrome and approach services. However, for London airports, the recovery of charges for the London Approach would be integrated into Eurocontrol charges. The remaining aerodrome services for each London airport would be remunerated from the airport under contract.

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 0	
Average Annual Cost (excluding one-off)	
£ unknown	

Description and scale of **key monetised costs** by 'main affected groups'

Total Cost (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups' Option C may lead to possible increase in admin costs for BAA due to multiple negotiations. Possible increase in cost to airlines, as it would raise the unit rate for en-route services. . Some airlines may face higher charges as a result of any change in pricing structures. For Scottish airports the unregulated environment may lead to possible increase in prices.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ N/A	
Average Annual Benefit (excluding one-off)	
£ N/A	

Description and scale of **key monetised benefits** by 'main affected groups'

Total Benefit (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' For Aerodrome services, possible reduction in costs for NSL due to lower billing costs in both London and Scotland. There are also benefits associated with the reduced contingent cost for government as it will no longer have to promulgate and enforce recovery of charges. Some airlines may benefit from any changes to pricing structures.

I

Price Base Year 2007	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate)

			United Kingdom	
What is the total annual cost of enforcement for these organisations?			£	
			Yes	
What is the value of the proposed offsetting measure per year?			£N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	Unknown	Unknown		

negligible			

Key: **Annual costs and benefits: Constant Prices** | **(Net) Present Value**

Policy Option: D	**Description:** Remove NSL's authority to levy charges on the operators of aircraft at the three Scottish airports for aerodrome and approach services. For London airports, NERL would continue direct charging for approach services. The remaining aerodrome services for each London airport would be remunerated from the airport under contract.

COSTS

ANNUAL COSTS

One-off (Transition) **Yrs**

£ 0

Average Annual Cost (excluding one-off)

£ unknown

Description and scale of **key monetised costs** by 'main affected groups'

Total Cost (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups' Option D may lead to possible increase in administrative costs for BAA due to multiple negotiations. Some airlines may face higher charges as a result of any change in pricing structures. For Scottish airports the unregulated environment may lead to possible increase in prices.

BENEFITS

ANNUAL BENEFITS

One-off **Yrs**

£ N/A

Average Annual Benefit (excluding one-off)

£ N/A

Description and scale of **key monetised benefits** by 'main affected groups'

Total Benefit (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' For Aerodrome services, there will be a possible reduction in costs for NSL due to lower billing costs in both London and Scotland. There are also benefits associated with the reduced contingent cost for government as it will no longer have to promulgate and enforce recovery of charges. Some airlines may benefit from any changes to pricing structures.

I

Price Base Year 2007	Time Period Years	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate)

			United Kingdom	
What is the total annual cost of enforcement for these organisations?			£	
			Yes	
What is the value of the proposed offsetting measure per year?			£N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
			No	
Annual cost (£-£) per organisation	Micro	Small	Medium	Large

	Unknown	Unknown		
negligible				

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

1. Scope of the impact assessment

1.1. This Impact Assessment (IA) assesses whether the Government should support the end of Direct Charging at six BAA airports (Aberdeen, Edinburgh, Glasgow, Gatwick, Heathrow and Stansted). The case for ending direct charging was set in the Consultation Document "Ending Direct Charging for Air Navigation Services at Six BAA Airports", "Government Decision on Ending Direct Charging for Air Navigation Services at Six BAA Airports" and associated IAs. This IA seeks to present, as far as possible, a factual assessment of the potential impacts of the possible impacts.

2. Options Analysis

2.1. This section sets out the costs and benefits of various options; the associated assumptions and sensitivities; and discusses the risks associated with each option. Tables 1 & 2 presents the summary of proposed options and impacts respectively.

Table 1: Summary Description of Options

	London		Scotland	
	Approach Services	**Aerodrome Services**	**Approach Services**	**Aerodrome Services**
Option A	Approach charges reflected in NERL's cost base	NSL negotiates and charges aircraft operators directly	Charges reflected in NSL cost base	NSL negotiates and charges aircraft operators directly
Option B	Approach charges reflected in London airports' cost base	London airports negotiate and charge aircraft operators directly. NSL charges the London airports for providing the aerodrome service	Approach charges reflected in Scottish airports' cost base	Scottish airports negotiate and charge aircraft operators directly. NSL charges the Scottish airports for providing the aerodrome service
Option C	Approach charges incorporated into Eurocontrol en-route system	London airports negotiate and charge aircraft operators directly. NSL charges the London airports for providing the aerodrome service	Approach charges reflected in Scottish airports' cost base	Scottish airports negotiate and charge aircraft operators directly. NSL charges the Scottish airports for providing the aerodrome service
Option D	Approach charges reflected in NERL's cost base	London airports negotiate and charge aircraft operators directly. NSL charges the London airports for providing the aerodrome service	Approach charges reflected in Scottish airports' cost base	Scottish airports negotiate and charge aircraft operators directly. NSL charges the Scottish airports for providing the aerodrome service

Table 2: Summary of Costs and Benefits (All options are appraised relative to Option A - base case / do nothing option)					
		London		Scotland	
		Costs	Benefits	Costs	Benefits
Option A	**Approach & Aerodrome**	-	-	-	-
Option B	**Approach**	▪ Increase in costs for the airport as the London approach is incorporated in their cost base, although BAA recovers this from the aircraft operators	-	▪ Scottish airports costs now reflected in airport's cost base, although BAA now charges the airlines directly.	▪ Reduction in costs for NSL as approach services no longer falls in their cost base
	Aerodrome	▪ Possible increase in administration costs for airports due to multiple negotiations for aerodrome services	▪ Reduction in costs for NATS due to lower billing costs ▪ Reduced contingent cost for government as it no longer have to promulgate and enforce recovery	▪ Possible increase in administration costs for BAA due to multiple negotiations ▪ Unregulated environment may lead to possible increase in prices or a change in the pricing structure based on another formula that may prove costly to aircraft operators	▪ Reduction in costs for NSL due to lower billing costs ▪ Reduced contingent cost for government as it no longer has to promulgate and enforce recovery
Option C	**Approach**	▪ Possible increase in cost to airlines, as it would raise the unit rate for en-route services.	-	Same as Option B	Same as Option B
	Aerodrome	Same as Option B	Same as Option B	Same as Option B	Same as Option B
Option D	**Approach**	-	-	Same as Option B	Same as Option B
	Aerodrome	Same as Option B	Same as Option B	Same as Option B	Same as Option B

OPTION A

Description

2.2. Continue existing charging arrangements at the six airports for both aerodrome and approach services. This is the do-nothing / base case option against which Options B, C and D are assessed.

2.3. The do-nothing option is the base case against which all options are assessed, over the appropriate appraisal period. By definition there are no *additional* costs or benefits associated with it. However, the profile of costs and benefits within the base case are likely to change over time relative to the "current year".

Costs over time

2.4. Over time we expect an increase in the number of airlines in the market. We can see in recent years the growth of low cost airlines and an insatiable demand by consumers to travel. Despite talk of market maturity we have yet to see conclusive evidence. An increase in the number of airlines over time will increase the billing costs for NSL. The burden of increased negotiation can be measured by the extra resources (labour) and time foregone that will be devoted to this activity.

2.5. The airport market is a competitive market in which we can expect to see new entrants over time. Despite barriers to entry such as planning permission and high capital costs we have seen continued growth in regional airports in recent years. As we expect to see more airports over time this will increase the burden on the CAA as they continue to revise charges for the aerodrome services.

2.6. Under the current regime and over time we can expect costs for Government to continue as it promulgates and enforces recovery. However we do not expect these costs to worsen over time. This is sensitive to the number of incidents where government must enforce recovery of unpaid charges.

Benefits over time

2.7. BAA will face the continued benefits of not having to conduct multiple negotiations with airlines. Multiple negotiations would otherwise produce additional costs to BAA in terms of additional resources (labour) and time foregone. As we expect the number of new entrants in the airline market to increase the benefits increase relative to the current year.

OPTION B

Description

2.8. Remove NSL's authority to levy charges on the aircraft operators at all six airports for both the aerodrome and approach services.

- London Airports - For Heathrow, Stansted and Gatwick, approach service charges would be reflected in the cost base of their airports and covered within the CAA price cap regime. For aerodrome service charges, the London airports would now be able to directly negotiate with the aircraft operators, with NSL continuing to charge the London airports for providing the service.
- Scottish Airports - For Edinburgh, Glasgow and Aberdeen, approach and aerodrome services would now be reflected in the cost base of the airports, but would remain unregulated by the CAA and still would need to enter into a contract with NSL to provide services. For aerodrome and approach service charges, the Scottish airports would now be able to directly negotiate with the aircraft operators, with NSL continuing to charge the airport for providing the service.

Costs

2.9. Table 3 sets out potential costs for different sectors of the aviation industry.

Table 3 : Costs associated with Option B						
		BAA	**Airlines**	**CAA**	**NSL / NERL**	**GOVT**
London	**Aerodrome Services**	▪ They will now conduct multiple negotiations. Multiple negotiations are a cost to BAA in terms of time lost. BAA may need to hire more staff, which also carries a cost in terms of time lost in recruitment and administration			-	none
	London Approach	▪ The cost of London Approach is now reflected into their cost base		London Approach is incorporated into the price cap. This creates some additional work in setting the price cap.	-	none
Scotland	**Aerodrome Services**	▪ They will now conduct multiple negotiations. This is an additional cost in terms of resources and time.	▪ In this unregulated environment airlines may face an increase in price or a change in the pricing structure based on another formula other than weight			
	Approach Services	▪ They will now conduct multiple negotiations. This is an additional cost in terms of resources and time.	Same as above			

Benefits

2.10. Table 4 sets out potential benefits for different sectors of the aviation industry.

Table 4: Benefits associated with Option B						
		BAA	**Airlines**	**CAA**	**NSL / NERL**	**GOVT**
London	**Aerodrome Services**	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	Airlines will negotiate more directly with BAA.	less administrative burden in terms of regulating NSL and no longer specifying charges	none	This does not require Government based powers to promulgate and enforce recovery
	London Approach	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	Airlines will negotiate more directly with BAA.	less administrative burden in terms of regulating NERL and no longer specifying charges	less administrative burden	This does not require Government based powers to promulgate and enforce recovery
Scotland	**Aerodrome Services**	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	Airlines will negotiate more directly with BAA	none	none	This does not require Government based powers to promulgate and enforce recovery
	Approach Services	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	Airlines will negotiate more directly with BAA	none	none	This does not require Government based powers to promulgate and enforce recovery

OPTION C

Description

2.11. London Airports :

- Approach Services - Approach service charges would be incorporated into the Eurocontrol en-route charges to the maximum extent possible.
- Aerodrome Services - NSL authority to levy charges on aircraft operators would be removed. The London airports would now be able to directly negotiate with the aircraft operators, with NSL continuing to charge the London airports for providing the service.

2.12. Scottish Airports - Approach and aerodrome services would now be reflected in the cost base of the airports, but would remain unregulated by the CAA and would still need to enter into a contract with NSL to provide services.

Costs

2.13. Table 5 sets out potential costs for different sectors of the aviation industry. We can see from Table three above, for the London market the London approach is incorporated into Eurocontrol. The London approach service is operated separately by NERL out of Swanwick. NERL provides a service for Heathrow, Gatwick and Stansted. Eurocontol bill and collect en route charges for 38 member states. This option would integrate NERL's en route charges into the Eurocontrol charges. Thus raising the unit rate for all airlines even if they do not fly into London. Thus the unit charge levied on airlines after this incorporation will rise. This will disproportionately affect those airlines that do not fly in or out of the London airports.

Table 5: Costs associated with Option C

		BAA	Airlines	NSL/NERL	CAA	Govt
London	**Aerodrome Services**	▪ They will now conduct multiple negotiations. This is an additional cost in terms of resources and time	▪ There is still a price cap applied, however BAA may change the formula used. They could change it to a no weight based formula, which may have distribution effects among airlines.	-	-	-
	Approach Services	▪ London approach is incorporated into eurocontrol. There are no extra costs for BAA	▪ As the London approach charges are now incorporated into eurocontrol. The unit charge levied on airlines will increase. This will disproportionately affect those airlines that do not fly in or out of the London airports.	-	-	-
Scotland	**Aerodrome Services**	-	-	-	-	-
	Approach Services	▪ They will now conduct multiple negotiations. This is an additional cost in terms of resources and time.	▪ As the London approach charges are now incorporated into eurocontrol. The unit charge levied on airlines will increase. This will disproportionately affect those airlines that do not fly in or out of the London airports.	-	-	-

Benefits

2.14. Table 6 sets out potential benefits for different sectors of the aviation industry.

Table 6: Benefits associated with Option C						
		BAA	**Airlines**	**NSL/NERL**	**CAA**	**Govt**
London	**Aerodrome Services**	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	They can now negotiate directly with airlines	-	Less admin burden	This does not require Govt based powers to promulgate and enforce recovery
	Approach Services	The London approach charge comes under eurocontol. There are no benefits from this.	-	less admin burden	less admin burden	This does not require Govt based powers to promulgate and enforce recovery
Scotland	**Aerodrome Services**	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	They can now negotiate directly with airlines	less admin burden	less admin burden	This does not require Government based powers to promulgate and enforce recovery
	Approach Services	The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	They can now negotiate directly with airlines	less admin burden	less admin burden	This does not require Govt based powers to promulgate and enforce recovery

OPTION D

Description

2.15. Remove NSL's authority to levy charges on the operators of aircraft at the three Scottish airports for aerodrome and approach services. For London airports, NERL would continue direct charging for approach services. The remaining aerodrome services for each London airport would be remunerated from the airport under contract.

Costs

2.16. Table 7 sets out potential costs for different sectors of the aviation industry.

Table 7: Costs associated with Option D						
		BAA	**Airlines**	**NSL/NERL**	**CAA**	**Govt**
London	**Aerodrome Services**	▪ The aerodrome charges are incorporated into BAA cost base	▪ The price cap remains, however BAA may choose to change the formula to an non weight approach	-	▪ Have to incorporate charges administer price cap	-
	Approach Services	-	-	-	-	-
Scotland	**Aerodrome Services**	▪ They will now conduct multiple negotiations	▪ Charges may rise in this unregulated environment	-	-	-
	Approach Services	▪ They will now conduct multiple negotiations	▪ Charges may rise in this unregulated environment	-	-	-

Benefits

2.17. Table 8 sets out potential benefits for different sectors of the aviation industry.

Table 8: Benefits associated with Option D						
		BAA	**Airlines**	**NSL/NERL**	**CAA**	**Govt**
London	**Aerodrome Services**	▪ For aerodrome charges BAA will now negotiate more directly with airlines	▪ Airlines will now negotiate directly with BAA on aerodrome charges	▪ less admin burden	▪ less admin burden	▪ This does not require Government based powers to promulgate and enforce recovery for aerodrome charges
	Approach Services	-	-	-	-	-
Scotland	**Aerodrome Services**	▪ The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	▪ Airlines will now negotiate directly with BAA	▪ less admin burden	▪ less admin burden	▪ This does not require Government based powers to promulgate and enforce recovery for aerodrome charges

	Approach Services	▪ The airport both negotiates the contract and pays the charges, providing a greater incentive to achieve value for money	▪ Airlines will now negotiate directly with BAA	▪ Less admin burden	▪ less admin burden	▪ This does not require government based powers to promulgate and enforce recovery for aerodrome charges

3. Implementation

3.1. Section 77 of the Transport Act gives the Secretary of State discretion, by order, to designate or de-designate the airports which have direct charging schemes, by order. The Secretary of State also has the power by order to amend the definition of chargeable air services. There does not, therefore, appear to be any impediment to implementing any of the options under the existing legislation.

3.2. For the Scottish airports, while in principle we have decided to end direct charging the exact date of implementation has not yet been decided. This will mean direct charging will continue at the Scottish airports beyond 1st April 2008 on the basis of the current charges until such a time as new charges have been consulted on and specified by CAA.

3.3. An additional issue has a bearing on determining the timing of exercising the above power to end direct charging. NSL's charges to airlines are based on forecasts of flights handled at the airports. Any under or over recoveries, based on these forecasts, are reflected in charges two years in arrears. This is an established practice well understood between NSL and the airlines. The direct charging power has been the means by which NSL recoups any under-recoveries at the end of a given two year period.

3.4. According to NSL, the total amount of under-recovery at the three London airports is around £286,000 accrued over 2006/07 and 2007/08. In view of the relatively small amounts involved spread over high volumes of traffic, CAA decided to specify charges to enable NSL to recover the deficit by the end of the 31 March 2008 meaning that direct charging could be ended with effect from 1 April 2008.

3.5. However, at the three Scottish airports, the amounts of under-recoveries exceed £3 million over the two years of which £2.7 million relates to Aberdeen alone. Given the significantly higher amounts involved and lower volumes of traffic which the three airports handle, it would not have been acceptable for CAA to specify charges to recoup these amounts before 31 March 2008. Therefore, if we had ended direct charging from 1 April 2008 at the Scottish airports, this would have removed CAA's ability to consider NSL's request to seek recovery from airlines. We therefore delayed the end of direct charging at the three Scottish airports to enable further discussion with stakeholders on the impact of recouping the under-recoveries.

4. Competition Assessment

4.1. The competition assessment seeks to give an overview of the potential impact of the possible options for ending direct charging. At the core of this assessment are the potential effects of ending direct charging for approach services and aerodrome services in the unregulated Scottish market. Furthermore, a key concern is the possible effects of incorporating the London approach services into Eurocontrol. This would raise the unit charge for all airlines. This would have distributional consequences for those airlines that do not fly into the London airports.

Affected Markets

4.2. In assessing the competition implications of ending direct charging, we have identified two key affected markets that might be relevant. These are discussed below.

Airport Market

4.3. Commercial airports hold licenses to operate landing and take off facilities for scheduled and charter airlines for air passengers and air freight services. They generate their revenues principally from two sources:

- Aviation revenues: these take the form of passenger charges , runway movement charges and aircraft parking charges.
- Commercial revenues: these include various forms such as duty free and tax free shopping, tax paid specialist shops, catering, bureaux de change, car parking and rental, transport operations and property services.

4.4. There are three forms of demand for the aviation and commercial services provided by airports.

- Passengers are both direct and indirect consumers of airport services.
- Freight demand and airline demand.
- Airlines in general make plans, over relatively long time periods, season to season and take strategic decisions over the long run.

4.5. The U.K. airport market has grown year on year with the revenue generated in 2006 standing at nearly £3 bn. Between 2002 and 2006, the airport market grew overall by 23 per cent .The largest increase in revenue occurred between 2003 and 2004 where the revenue generated grew by 9.1 %.

4.6. For this assessment, the relevant airport market segments are:

- Scotland: The three Scottish airports we are concerned with are Edinburgh, Glasgow and Aberdeen. Competition between Edinburgh and Glasgow is particularly strong with 29% of air traffic movements flying through Glasgow and 37% of all air traffic movements flying through Edinburgh. This is not surprising given the proximity of the two cities. There are other Scottish airports within this market but they remain unaffected by this legislation; namely Barra, Benbecula, Dundee, Inverness, Islay. Kirkwall, Glasgow Prestwick, Scatsa, Stornoway, Sumburgh, Tiree and Wick. The most substantial of these unaffected airports is Glasgow Prestwick with 17,819 air traffic movements in 2006. Ryanair being the major carrier.
- London: The London U.K. airport market contains Heathrow, Gatwick, Stansted and Luton as well as smaller airports such as London City. Heathrow dominates the

London the market with 477, 048 aircraft movement in 2006, 45% of the London market. Due to Heathrow's position as a major international hub, her competitors extend to include some overseas airports (notably Charles De Gaulle, Schiphol and Frankfurt).

Airline Market

4.7. The passenger airline market can be broadly divided between scheduled and non scheduled services; and domestic and international.

- Scheduled services operate according to a published timetable and are open to members of the public. Non-scheduled, or charter services include all air transport movements other than scheduled services. Domestic services are services that are flown entirely within the UK, the Isle of Man and the Channel Islands. International services are services flown between the UK, the Isle of Man, the Channel Islands and points overseas.
- Non scheduled air services are usually operated by UK based tour operators and are part of the air inclusive tour (AIT) or package holidays marketed by tour operators.

4.8. In recent years there has been a dramatic rise in the number of passengers served by UK airlines and the number of kilometres flown. In 2006, UK airlines carried 127.4 million passengers on scheduled and non scheduled flights – 19.6 per cent rise on 2002. The number of seat kilometres used was also up by 22.9 per cent over the same period. These increases largely resulted from the growth of the scheduled air service sector, especially the low cost airline market. The scheduled services airline sector has developed steadily since 2002, with both international and domestic passengers increasing yearly up to 2006. International flights are the largest segment of the market, accounting for 74.7 per cent of the passenger total in 2006. Growth in the international sector has tended to outpace the domestic market since 2002 with a rise of 42.6 per cent up to 2006, compared with a 15.7 per cent increase in domestic travel.

4.9. In Scotland BA and Easy jet dominate the airline market. There is a considerable presence of other low cost airlines that use smaller planes. For example Flybe were the third largest operator out of both Edinburgh and Glasgow. Eastern Airways which dominates Aberdeen fleet is made up of British Aerospace turboprop and Saab jetprop aircraft. They are designed to transport 29 or 50 passengers.

4.10. In London the market shares depends on the airport. In 2006, British Airways retained a significant share of the market with 28.5m passengers, equivalent to 42% of the Heathrow's' passengers. In comparison BMI is the next largest operator at Heathrow with 4. 8m passengers, only 7% of Heathrow passengers. Gatwick is also dominated by BA with 9.2m passengers, 27% of the Gatwick passengers with Easyjet her main rival with 5.4m passengers. Easyjet dominates Luton with 57% of Luton passengers and Ryanair dominates Stansted with 14.9m passengers in 2006.

Assessment of Competition Impacts

4.11. The assessment of the impact of ending direct charging at London and Scottish airports has relied on the OFT Competition Assessment Guidance 2007 and focused on addressing four key competition filter questions. Given the similarity in the options, we have focused the assessment on the central concept of ending direct charging. The findings are set our below.

Directly limits the number of suppliers?

4.12. This criterion assesses the extent to which ending direct charging would directly limit the number of suppliers in the market. For a policy proposal to directly limit the number of suppliers in the market, it must have the following features:

- The award of exclusive rights to supply, or
- Procurement from a single supplier or restricted group of suppliers, or
- The creation of a form of licensing scheme, or
- A fixed limit (quota) on the number of suppliers

4.13. The nature of the proposal has no elements within it that would directly limit the number of suppliers in both the airports and airline markets. The costs on airlines and airports are indirectly imposed.

Indirectly limit the number of suppliers?

4.14. This criterion assess the extent to which ending direct charging would indirectly limit the number of suppliers in the market. This is likely to happen if the proposals significantly increases the costs (relative to the do-nothing) of :

- new suppliers relative to existing suppliers; or
- some existing suppliers relative to others; or
- entering or exiting an affected market;

There are insignificant costs associated with the ending of direct charging, however this is not the relevant section for exploring these costs. We are only concerned here with those costs that significantly increase costs for existing suppliers relative to others. If the London approach charges were to be incorporated into eurocontrol, the unit rate would rise for all airlines. This would have adverse consequences on those airlines that do not serve the London airports. For small airlines these costs may be significant.

Limits the ability of suppliers to compete?

4.15. This criterion assesses the extent to which the proposals might generate indirect impacts on suppliers. This is likely to be case if ending direct charging controls or substantially influences:

- the price(s) a supplier may charge;
- the characteristics of the product(s) supplied, for example by setting minimum quality standards;
- innovation to introduce new products or supply existing products in new ways;
- the sales channels a supplier use or the geographic area in which a supplier can operate;
- the ability of suppliers' freedom to organise their own production processes or their choice of organisation.

4.16. In general the proposals do not limit the ability of suppliers to compete. However, it is possible that they may influence the price a supplier may charge. The degree to which this might be possible will vary between Scotland and London.

4.17. For Scotland, the ending of direct charging, in an unregulated environment, will allow BAA airports to raise prices for airlines and change the construct of the charging formula. There may be an increase in costs for airlines operating out of the Scottish airports. However we have no evidence to suggest these costs will definitively rise. The Scottish airports operate within a competitive market. This will act as a restraint on the increase of charges as airlines can switch away from these airports. Airports generate a substantial proportion of their income through commercial revenues (as discussed above). Airports have an incentive to maximise passenger throughput and not to discourage airlines from serving their airport. There is competition between airports to attract airlines and thus passengers. It is therefore not clear whether airports would raise charges. The incentives for airports are not fundamentally altered by this legislation. However airports are now given the freedom to set charges as they see fit.

4.18. In London, aerodrome charges in the London market will be constrained by the price cap. However, BAA may change the formula by which aerodrome charges are calculated. If BAA for example were to change to a per flight formula, low cost airlines may be adversely affected. Thus the price a supplier may charge some individual airlines may alter. However as noted above the incentives for airports have not fundamentally altered.

Limits the incentive of suppliers to compete?

4.19. This criterion assesses the extent to which the proposals would reduce suppliers' incentive to compete vigorously. This is likely to be the case if ending direct charging leads to the following:

- exempts suppliers from the general competition law;
- introduces or amends intellectual property regime;
- requires or encourages the exchange between suppliers, or publication of information on prices, costs, sales or outputs;
- increases the costs to customers of switching between suppliers;

We do not believe ending direct charging would lead to any of the effects described above in both the airports and airline markets.

. 5. Race / Disability / Gender Equality

5.1. We have checked the equality impact assessment filter questions. There are no impacts on race , gender or disability equality.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

	Yes	No
	No	No
	No	No
	No	No
	No	No
	No	No
	No	No
	Yes	No
	Yes	No
	Yes	No
	No	No