EXPLANATORY MEMORANDUM TO

THE AERODROMES (DESIGNATION) (DETENTION AND SALE OF AIRCRAFT) (ENGLAND AND WALES) (AMENDMENT) ORDER 2011

2011 No. 832

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 Instrument

2.1 This Order is made under section 88 of the Civil Aviation Act 1982 ("the 1982 Act") designating Cotswold Airport for the purposes of the detention and sale of aircraft for unpaid airport charges.

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

3.1 None.

4. Legislative Context

4.1 Section 88 of the 1982 Act grants powers to certain aerodrome authorities to detain and sell aircraft for unpaid charges. Section 88(10) restricts the application of the section to any aerodrome owned or managed by any Government department or a local authority, and to any other aerodrome designated for the purpose of the section by an order made by the Secretary of State. The "aerodrome authority" is the person owning or managing the aerodrome.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales, but applies to just one aerodrome, namely Cotswold Airport.

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 Section 88 of the 1982 Act confers on an aerodrome authority the power to detain and sell aircraft in certain circumstances where airport charges have not been paid.

7.2 Normally, where payment of charges is overdue, aerodrome authority will pursue payment in the same way as any other business. However, it is in the nature of the civil aviation business that some debtors are not

easily accessible. Where an aircraft is detained by an aerodrome authority the likely outcome is that the unpaid charges will be settled promptly. These powers should only be used when all other means open to the aerodrome authority have failed.

7.3 Cotswold Airport offers aircraft operators and airlines space to store aircraft on a long or short term basis, maintenance services and aircraft recycling services. In the last year the aerodrome authority has seen an increase in the number of large aircraft parked at the airport for storage and they expect this trend to continue. The nature of this work and the current economic situation means that some of the airport's clients will be unable to pay the related fees, meaning that the airport will lose income, as well as space for parking other aircraft. In addition, there is a health and safety issue if a company has gone out of business as there is no one to manage the aircraft concerned.

7.4 The aerodrome authority at Cotswold Airport considers that if the airport became a designated aerodrome under section 88, this would give the authority the ability to deal with these issues quickly and efficiently and hopefully enable it to minimise its losses. The designation of an aerodrome under section 88(10) is, as a matter of practice rather than law, undertaken in consultation with the CAA and the aerodrome authority.

7.5 Before an aerodrome is designated, the Department would wish to be satisfied that the aerodrome operator has a legitimate need for designation and has appropriate credit control arrangements in place, making adequate provision for reminders and warnings as necessary so that debts will rarely build up in practice. In the event that debts do accumulate any detention action against the aircraft operator will not be a surprise but will be part of a measured and incremental process. The Department has satisfied itself on these matters.

8. Consultation Outcome

8.1 A limited consultation was carried out in respect of the previous (consolidating) instrument that came into force on 1 October 2009 (S.I. 2009/2350), listing all currently designated aerodromes. The Department consulted six aviation associations and the CAA, and received only three responses from the consultees. None raised any objections to the designation of additional aerodromes.

8.2 The Department additionally asked the CAA how much revenue had been lost in unpaid air navigation services charges. It did so because the Civil Aviation Authority's powers to recover such charges may be exercised on any occasion when the aircraft is on any aerodrome to which section 88 of the 1982 Act applies.

8.3 Although the number of detentions carried out by the CAA is relatively small, averaging 6 per year, in cases where the normal credit control

process has been unsuccessful, the threat of detention is a highly effective tool in recovering unpaid air navigation services charges. If, as result of the designation of Cotswold Airport, the CAA is able to effect one detention every three years in respect of unpaid air navigation services charges, the potential annual benefit would be circa £70k. In this context, the CAA had no objections to this aerodrome being designated.

8.4 A full consultation was not carried out as the airport designation proposed will not impose any significant additional costs on the private and public sectors.

9. Guidance

9.1 A Departmental guidance note will be provided to Cotswold Airport following its designation. It contains information on the action that the Department is prepared to take to assist in securing the payment of airport charges.

10. Impact

10.1 The impact on charities or voluntary bodies is negligible. As regards the impacts on business, designation gives aerodromes the power to detain and sell aircraft in certain circumstances where airport charges have not been paid. As such it does not constitute a regulatory burden on those aerodromes; it is for the aerodrome authority to decide when to use the powers of detention. The detention of an aircraft is a serious measure and in the case of a foreign aircraft the repercussions may be complex and commercially uncertain. The Department's advice therefore is that aerodrome authorities should regard the powers to detain aircraft as powers to be used only when all other available means have failed.

10.2 The impact on the public sector is negligible

10.3 An Impact Assessment has not been prepared for this instrument as there are no costs or benefits to business.

11. Regulating small business

11.1 Cotswold Airport which is designated under this is not a small business and the aerodrome authority is content for the Order to be made.

12. Monitoring & review

12.1 The intention of this instrument is to designate the above mentioned airport with powers under section 88 to detain and sell aircraft in certain circumstances where airport charges have not been paid to the aerodrome authority as the airport's operator.

12.2 The Department has no current intention to review the new designation. The Department does not monitor the use of the detention powers at aerodromes, but, through its regular communication with relevant stakeholders, it is notified of any issues of concern to aerodromes and aircraft operators. Moreover, before formally threatening the use of detention powers against a foreign airline or operator, the Department would expect to be notified (pursuant to the guidance note mentioned in paragraph 9 above) so that, if appropriate, representations can be made to the airline or operator on behalf of the aerodrome authority.

13. Contact

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