

Response to consultation of revising the Slot Sanction Scheme implementation guidelines – Airport Coordination Limited

The imposition of a fine for each instance of a movement at a time significantly different from the allocated slot, once a body of evidence is built up which demonstrates that the behaviour is repeated and intentional as required by the 2013 Statutory Instrument.

ACL agrees with the proposal for a financial penalty to apply on a per instance basis.

Article 14(5) of the EU slot Regulation states that “Member States shall ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional operation of air services at times significantly different from the allocated slots or with the use of slots in a significantly different way from that indicated at the time of allocation, where this causes prejudice to airport or air traffic operations”

The current guidelines allow the Coordinator with the consent of the Commission to propose a financial penalty of €3,000 in totality or €6,000 in total if the Coordinator intends to recommend to the Court if the matter is dealt with under Regulation 3(4) of the Irish Regulation. The limit applies regardless of the number of instances of misuse identified. As such the maximum penalty is the same for two occurrences of a misuse (minimum number of occurrences to demonstrate repeated) as it would be for an entire season of misuse (30 occurrences for an average summer season).

Due to the current level of the maximum financial penalty being relatively low there is little incentive for a carrier to change behaviour for series flying as the level of the potential financial penalty is fixed. As more operations occur the “cost” per operation/passenger of the penalty reduces so it can be argued that if an operator is planning to operate at a time different to the cleared time then it is advantageous to spread the penalty over the greatest number of flights and therefore does not act as an incentive to change behaviour. As such ACL would question if the current regime is as effective as it should be to comply with Article 14(5).

It is worthy of note that the imposition of financial penalties is rare. This only follows situations where dialogue with the operator to find an alternative solution has been exhausted. Table 1 shows the number of series slot monitoring queries raised by the Coordinator since the IATA Summer 2014 Scheduling Season. During this period the number of queries that have been raised for series flights has been increasing. This may be a direct correlation to the scarcity of available slots resulting in more operator requests not being satisfied at the time requested. During this period only one financial penalty has been imposed for a series of flight that operated at a different time than the slot allocated.

For the single financial penalty that was imposed, the operator continued to operate at times significantly different to the cleared slot times in the subsequent season. A new query was raised to deal with this misuse prompting action to be taken.

Season	No Further Action	Ongoing Monitoring	1st Warning Letter	Fine	Total
S14	8		1		9
S15	2				2
S16		1			1
S17	1	12		1	14
W14		2			2
W15		5			5
W16	2				2

Table 1 – Series Slot Monitoring Activity S14 – S17

The removal of the six month element from the definition of ‘repeatedly’, thereby allowing behaviour in previous seasons to be considered when assessing the appropriate treatment of an incident of slot misuse.

ACL is supportive of an amendment of the six month element of the definition of ‘repeatedly’ but would stop short of a total removal of a defined period.

The six month limitation impacts the effectiveness of the scheme on General/Business Aviation.

Due to the infrequent nature of General/Business operations, it is often difficult to achieve adherence through the slot sanction scheme as such operations may not be repeated in the six month period. There is no incentive for an operator to comply with the sanctions scheme if they are aware that it’s unlikely they will operate to the airport in the next six months. In comparison the scheme has been effective on adhoc operations by regular operators at the airport where the number of operations are significantly higher.

Table 2 shows the number of General/Business Aviation operations queries raised since the IATA Summer 2014 Scheduling Season. During this period only a single fine has been imposed.

Season	No Further Action	Ongoing Monitoring	1st Warning Letter	Fine	Total
S14	23	10			33
S15	31	12			43
S16	13	12			25
S17	2	3			5
W14	2	3	1		6
W15	9			1	10
W16	6	6			12

Table 2 – General/Business Aviation Slot Monitoring Activity S14 – S17

Series flights and the monitoring of ‘the allocated slots’ (of Regulation 3(a)), can only take place within the season concerned. As the imposition of a sanction has to be both repeated and intentional though, such circumstances would quickly develop (especially in the case of a daily series), and the coordinator would be justified based on knowledge of previous seasons performance in making a query after only two occasions, as this would be repeated within a six month period. The Coordinator would also still be able to consider the behaviour of the operator in the equivalent or previous season ‘for a scheduled air service’ when setting the size of the financial penalty, assuming that the proposal in the above section is adopted.

ACL believes the universal proposed indefinite element of repeatedly would place an unnecessary burden on the regular users at Dublin Airport of which the scheme has broadly been effective. Therefore ACL would suggest that the six month element is extended to 12 months. Where possible within the confines of a balanced approach this should apply to General/Business Aviation only with all other operations remaining at 6 months.

Provision for the publication of details related to Uncontested Sanctions by the Commission and/or the coordinator.

ACL supports the proposal to publish details related to Uncontested Sanctions. ACL has been publishing in the UK decisions related to the UK enforcement code. Increased awareness of potential fines has helped to educate carriers of the consequence of misuse.

A change in the definition of 'Intentionality', with a view to making this easier to demonstrate than is currently the case.

ACL supports the proposed changes with one addition that continues to demonstrate that the scheme is not incorporating on-the-day operational delays. Please see below.

3.6 Intentionally is taken to mean:

- a) *That, from the circumstances, the carrier intended to land or take-off an aircraft at or about the time that it did land or take off, if this is different from the allocated slot time – e.g. most obviously, published flight times on the internet or a differently filed flight plan time except for air services suffering on-the-day operational delays. In the case of operating a slot in a significantly different way from that indicated at the time of allocation, it is sufficient to show that the air carrier planned to operate with the aircraft actually used.*

ACL supports the proposed wording as it provides a clearer definition of intentionality.