Neutral Citation Number: [2026] EWHC 1733 (Admin)

Case No: AC-2026-LON-002801

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 July 2026

Before :

MR JUSTICE JOHNSON

- -

Between :

THE KING (on the application of GATWICK AIRPORT LIMITED)	**Claimant**
- and -	
SECRETARY OF STATE FOR TRANSPORT	**Defendant**
-and-	
(1) BRITISH AIRWAYS PLC (2) TUI AIRWAYS LIMITED	**Interested Parties**
-and-	
(3) INTERNATIONAL AIR TRANSPORT ASSOCIATION	**Intervener**

- -

Malcolm Birdling KC, Richard Howell and Jagoda Klimowicz (instructed by Clifford Chance LLP) for the Claimant
David Elvin KC, Michael Fry and Armin Solimani (instructed by Government Legal Department) for the Defendant
Robert Lawson KC (instructed by British Airways PLC) for the First Interested Party
Conor McCarthy (instructed by Norton Rose Fulbright LLP) for the Second Interested Party
John Kimbell KC (instructed by Clyde & Co) for the Intervener

Hearing date: 7 July 2026

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Approved Judgment

This judgment was handed down by release to The National Archives on 9 July 2026

Mr Justice Johnson:

Introduction

1. The claimant ("Gatwick") is the operator of Gatwick Airport. It challenges the Secretary of State's decision to make the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2026. The 2026 Regulations (broadly) permit airlines to "hand back" up to 10% of their landing and take-off slots at Gatwick (and other major airports in England) in 2026-27 without prejudicing their future slot allocations.

2. Gatwick's grounds of challenge are that:

   (1) The Secretary of State did not have power to make the 2026 Regulations. That is because she did not address her mind to whether they would increase the regulatory burden, or, if she did, her conclusion that they did not do so was irrational.

   (2) The Secretary of State conducted a flawed consultation.

   (3) There was a breach of the public sector equality duty.

3. The Secretary of State resists the claim. She says the claim is out of time, that she rationally considered the 2026 Regulations would not increase the regulatory burden, that she conducted a fair consultation and that there is no breach of the public sector equality duty which has, anyway, been raised too late. The airlines British Airways, and TUI, are interested parties. They support the Secretary of State's case. The International Air Transport Association ("IATA") is the global trade association for airlines, representing around 370 airlines worldwide, including the vast majority of scheduled international airlines operating in the UK. It intervenes in these proceedings and supports the Secretary of State's case.

4. There is a degree of urgency because the first deadline for airlines to hand back slots expires on 9 July 2026, two days after the hearing. In the light of the urgency, the case was listed for a rolled-up hearing to consider both the question of permission to claim judicial review and, if appropriate, the substantive claim. I am grateful to all counsel and their respective legal teams for the helpful way in which the materials were put before the court, for their cooperation in ensuring that the hearing could be completed within a day, and for their excellent submissions.

5. There is no substantial dispute about the factual background. I have taken the facts from the witness statements of Pierre-Hugues Schmit (Gatwick's Chief Executive Officer), David Silk (Director of the Aviation Directorate at the Department for Transport), Ian Elston (Deputy Director of Airport, Airspace, Resilience and Connectivity within the Aviation Directorate), Lara Maughan (IATA's area manager for the United Kingdom and Ireland), Neil Chernoff (the Chief Planning Officer and Strategy Officer of British Airways) and David Lawrence (Head of Flight Capacity Management for TUI).

Statutory framework

Airport slots

6. At certain airports, the number of aircraft movements that can be supported by the infrastructure is insufficient to meet airline demand. At such airports, slots are created

and allocated to airlines. A "slot" is the right to use the range of an airport's infrastructure that is necessary to operate an aircraft at a specific date and time for the purpose of take-off or landing. It has an intrinsic value. The evidence suggests that a seasonal slot (that is, an individual slot operated weekly over a season) at Heathrow has a value of £812,000.

The Slots Regulation

7. Council Regulation (EEC) No 95/93 of 18 January 1993 ("the Slots Regulation") applies to coordinated airports and makes provision for the allocation of slots. The Slots Regulation was, prior to Brexit, an EU Regulation which took direct effect in domestic law: section 2(1) of the European Communities Act 1972. Following Brexit, and the ensuing implementation period, the Slots Regulation became part of domestic law as retained direct EU legislation: section 3 of the European Union (Withdrawal) Act 2018. From the end of 2023, it remains part of domestic law as secondary assimilated EU law: sections 5 and 11(2)(a) of the Retained EU Law (Revocation and Reform) Act 2023.

8. The recitals to the Slots Regulation show that it was enacted against a background of a growing imbalance between airport capacity and airline demand for slots. It was intended to create a system of allocation based on neutral, transparent and non-discriminatory rules, and to make best use of the existing slots. It divides the year into a summer and winter season. The summer season runs for 7 months from March to October. The winter season runs for 5 months from October to March.

9. Airports are designated as coordinated airports by the Secretary of State: article 3. The coordinated airports in England are Heathrow, Gatwick, Manchester, Birmingham, London City, Stansted, Luton, Bristol and, for summer seasons only, Leeds Bradford. A coordinator is appointed to administer the allocation of slots. The coordinator in England is Airport Coordination Limited ("ACL"). A "series of slots" is a group of at least five slots for the same time on the same day of the week: article 2(k).

10. The coordinator must maintain a pool of unallocated slots: article 10(1). Series of slots are allocated to airlines from the slot pool, and airlines must return their slots to the slot pool at the end of each season: article 8(1). However, if an airline demonstrates that it has used its allocated series of slots for at least the required percentage of the time then it does not have to return its slots to the slot pool: article 8(2). The required percentage is 80%: article 2(n). To help alleviate the effect of the covid pandemic on airlines, that percentage was reduced to 50% in 2021/22 and 70% in 2022/23: section 12(2) of the Air Traffic Management and Unmanned Aircraft Act 2021, regulation 2(2) of the Airports Slot Allocation (Alleviation of Usage Requirements) (No 2) Regulations 2021, regulations 1 and 2 of the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2022, and regulations 1 and 2 of the Airports Slot Allocation (Alleviation of Usage Requirements) (No 3) Regulations 2022.

11. An airline may give up some or all of its slots before the start of a season: article 10(3). If it does so, then those slots are not taken into account when calculating whether, in the ensuing season, it has used its required slots for at least the required percentage of the time.

12. The requirement to return slots does not apply if the airline can demonstrate that non-utilisation is justified for various specified reasons. Article 10(4) sets out the reasons for which non-utilisation can be justified. They include:

> "unforeseeable and unavoidable circumstances outside the air carrier's control leading to:
>
> - grounding of the aircraft type generally used for the air service in question;
>
> - closure of an airport or airspace;
>
> - serious disturbance of operations at the airport concerned, including those series of slots at other airports in the United Kingdom or EEA states related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period;…"

13. Mr Schmit explains the effect of these provisions:

> "8. The key discipline underpinning the regime is what is commonly referred to as the 'use-it-or-lose-it' rule, or the '80/20 rule'. In order to retain what are known as 'grandfather rights' to the same slots in the equivalent scheduling period the following year, an airline must use at least 80% of its allocated slots during the current scheduling period. If it fails to do so, the relevant series of slots will be placed in the slot pool for reallocation to applicant carriers.
>
> 9. From my experience at [Gatwick], I know this use-it-or-lose-it discipline to be critical to the efficient operation of airports. Because of this discipline, airlines have a strong commercial incentive to operate their scheduled services.
>
> 10. There is an existing mechanism which permits airlines to hand back slots without suffering the consequences of the 80/20 rule where the cancellation is caused by circumstances outside the airline's control. This is known as Justified Non-Utilisation of Slots ('JNUS')... Under JNUS, airlines can apply to ACL to have slot non-use recorded as justified (and count as operated) where specific qualifying circumstances apply. …supply disruptions affecting fuel, including those related to geopolitical events, can qualify as a JNUS event, but only where they directly cause flight cancellations. A cancellation driven purely by higher fuel costs, as opposed to an actual supply shortage, does not qualify."

Airports Slot Allocation Regulations 2006

14. The 2006 Regulations supplement the Slots Regulation by providing the domestic administrative and governance framework for the allocation and management of slots

at coordinated airports. The decisions that fall to be made under the regulatory regime, and the administration of that regime, are largely for airlines and ACL. The regime has a substantial and direct impact on airports, but the role of airports in the administration of the regime, and decision-making under the regime, is limited to the provision of information (regulations 6 and 7), convening meetings (regulation 11(1)(a)), and responding to directions from ACL for the purpose of enforcing an airline's duty to use slots in the way that was indicated at the time of allocation (regulation 15(1), (2a)). As Robert Lawson KC, for British Airways, put it, the role of the airport in the regulatory regime is essentially passive.

The Retained EU Law (Revocation and Reform) Act 2023

15. As explained above, the Slots Regulation is secondary assimilated law. Section 14(3) and (10) of the 2023 Act make provision to replace secondary assimilated law. Section 14 states:

> "**Powers to revoke or replace**
>
> …
>
> (3) A relevant national authority may by regulations revoke any secondary retained EU law and make such alternative provision as the relevant national authority considers appropriate.
>
> …
>
> (5) No provision may be made by a relevant national authority under this section in relation to a particular subject area unless the relevant national authority considers that the overall effect of the changes made by it under this section… in relation to that subject area does not increase the regulatory burden.
>
> (6) For the purposes of subsection (5), the creation of a voluntary scheme is not to be regarded as increasing the regulatory burden.
>
> (7) The provision that may be made by regulations under this section may be made by modifying any secondary retained EU law.
>
> (8) Any provision made by virtue of this section is not retained EU law.
>
> (9) No regulations may be made under this section after 23 June 2026.
>
> (10) In this section—
>
> "burden" includes (among other things)—
>
> (a) a financial cost;
>
> (b) an administrative inconvenience;

(c) an obstacle to trade or innovation;

(d) an obstacle to efficiency, productivity or profitability;

(e) a sanction (criminal or otherwise) which affects the carrying on of any lawful activity;

…

"secondary retained EU law": references to secondary retained EU law are to be read after the end of 2023 as references to secondary assimilated law.

(11) In subsection (8) the reference to retained EU law is to be read after the end of 2023 as a reference to assimilated law."

16. The Secretary of State is a "relevant national authority": section 21(1).

17. Regulations may not be made under section 14(3) unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament: paragraph 5(1) and 5(2)(e) of schedule 5.

18. The 2023 Act also amends powers under the Legislative and Regulatory Reform Act 2006 to remove or reduce burdens: section 16. Section 1 of the 2006 Act states:

"**Power to remove or reduce burdens**

(1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2).

(2) That purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.

(3) In this section "burden" means any of the following—

(a) a financial cost;

(b) an administrative inconvenience;

(c) an obstacle to efficiency, productivity or profitability; or

(d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

…"

Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2026

19. The 2026 Regulations were made under section 14(3) of the 2023 Act. They replace article 10(3) of the Slots Regulation with the following:

"(3) Paragraphs 3A to 3C apply for purposes of the usage calculation.

(3A) Slots allocated to an air carrier before 31 January for the following summer season, or before 31 August for the following winter season, but which are returned to the coordinator for reallocation before those dates shall not be taken into account for the purposes of the usage calculation.

(3B) Without prejudice to paragraph 3A, for the purposes of the usage calculation for the summer season commencing on 29 March 2026 and ending on 24 October 2026—

(a) where paragraph (b) applies, the coordinator shall not take into account—

(i) up to 5% of slots allocated to an air carrier at an airport for that summer season which are returned to the coordinator before 10 July 2026; and

(ii) up to 5% of slots allocated to an air carrier at an airport for that summer season which have not been returned pursuant to sub-paragraph (i) and which are returned to the coordinator before 11 October 2026;

(b) this paragraph applies where an air carrier—

(i) had the right to use the same slots as are being returned to the coordinator pursuant to paragraph (a) during the summer season from 30 March 2025 to 25 October 2025, or received the slots being returned pursuant to paragraph (a) following a transfer or exchange which took place pursuant to Article 8a before 31 January 2026;

(ii) has notified passengers of the cancellation of the flights utilising slots being returned pursuant to paragraph (a) at least 14 days before the date on which the flights were due to depart; and

(iii) has not, at the time of returning the slots to the coordinator, given written notification to the coordinator or the managing body of the airport that it has permanently ceased, or will permanently cease, to operate air services at that airport, or publicly issued a written statement to that effect.

(3C) …"

20. Article 10(3C) makes equivalent provision to article 10(3B) in respect of the winter season from October 2026 to March 2027.

21. Thus, the effect of the 2026 Regulations is to modify the usage calculation under the Slots Regulation for the summer 2026 and winter 2026 seasons. For each of those seasons, an airline may return up to 10% of its allocated slots without those returned slots being taken into account against it for the purpose of the minimum usage requirement. In each case, the protection applies only if specified conditions are met. Those conditions include that the airline held historic rights to the same slots in the equivalent previous season, or received them by a qualifying transfer or exchange before the relevant deadline, and that passengers are given at least 14 days' notice of consequential flight cancellations.

22. The 2026 Regulations do not compel any airline to return a slot. They create a temporary opportunity for airlines to return a proportion of slots without prejudicing future slot allocations. If an airline does not rely on the 2026 Regulations, the ordinary usage rules continue to apply. If an airline does rely on the 2026 Regulations, the returned slots are disregarded for the usage calculation. The measure thus enables airlines to plan changes in advance, rather than waiting for a shortage or operational disruption to arise and then claiming, retrospectively, that a justified non-utilisation exception applies.

23. The draft of the 2026 Regulations was accompanied by an Explanatory Memorandum when it was laid before Parliament as part of the affirmative resolution process. The parties agree that if the Explanatory Memorandum is a proceeding in Parliament then it may nevertheless be referenced as a historical record of material that was put before and considered by the Secretary of State. No party seeks to rely on the Explanatory Memorandum for any other purpose, and no party seeks to challenge its content. It follows that reference to the Explanatory Memorandum does not infringe article 9 of the Bill of Rights 1689: *R(ALR and others) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin); [2026] 1 WLR 10 *per* Dame Victoria Sharp PKBD, Newey LJ and Chamberlain J at [6] and paragraphs 79 – 89 of appendix B to the judgment.

24. Paragraphs 5.5 and 5.6 of the Explanatory Memorandum which accompanied the 2026 Regulations when they were considered by Parliament states:

> "5.5 Airport slots have significant competitive, operational, and financial value to the airlines which hold them. Under ordinary circumstances, the 80:20 rule helps to encourage efficient use of scarce airport capacity whilst allowing airlines a degree of flexibility in their operations. However, the current conflict in the Middle East is having an impact on the aviation industry and airlines' ability to operate, including increased operational costs due to higher fuel cost as well as longer flight times due to changes in flight paths to avoid closed or high-risk airspace. Airlines are also seeing a reduction in passenger demand for destinations near conflict zones, but also to other destinations due to rising passenger concern around flying more generally. The conflict in the Middle East, and the impacts of it, is not something that airlines could have predicted or exercise any control over. It is therefore considered necessary to provide

> some relief from the slot usage requirements and enable airlines to return a proportion of their slots for summer 2026 and winter 2026 seasons without prejudice to their historic rights to the slots.
>
> 5.6 This is intended to protect the resilience of the sector by discouraging inefficient slot use by mitigating the risk that empty or near-empty 'ghost flights' will be operated in order to retain airlines' historic rights to their slots. It also mitigates the negative impact such flights would have on the environment and protects future connectivity."

25. The impact on businesses was explained in section 9 of the Explanatory Memorandum:

> "**9. Impact Assessment**
>
> …
>
> 9.2 …in the Department's view, the benefits are likely to significantly exceed the costs… In the absence of government intervention… there is a risk that airlines would lose existing slots, undermining their financial viability and threatening connectivity, or that they would operate loss-making and environmentally damaging flights in order to meet the 80% slot usage ratio…
>
> 9.3 The main benefits of relief are therefore expected to be that airlines with existing slot holdings will not have to fly loss-making flights 80% of the time in order to preserve those rights, and that the negative environmental impacts (including carbon emissions) associated with airlines running such flights will be avoided. Air passengers are expected to benefit from the proposed relief through the preservation of historic levels of connectivity once the conflict in the Middle East has ended (existing route networks and connections having been incrementally developed over many years).
>
> 9.4 The main costs of relief are expected to be that it will be more difficult for airlines seeking to accumulate long-term rights to slots. This could negatively impact new entry and competition amongst airlines. To the extent that the proposed relief result in airlines operating fewer flights, affected airports may also suffer a loss in airport charge income (and perhaps commercial income).
>
> 9.5 The legislation will directly impact one small business, Airport Coordination Limited (ACL). According to its published accounts, ACL has around 40 employees, which means that it classifies as a small business. ACL is currently the only slot coordinator for all coordinated airports in the UK. There will be some administrative costs incurred by ACL as a result of this

> legislation, these costs would be expected to be minor in the context of the sector. There is no specific action proposed to minimise the cost as ACL would generally be able to recover any additional costs it incurs via charges on users.
>
> 9.6 There is no increase in regulatory burden as a result of enabling airlines to return a proportion of slots they have been allocated for the summer 2026 and winter 2026 seasons. The alleviation does not create or act as an obstacle to trade, nor does it create a barrier for efficiency and profitability. Instead, it will help protect the financial viability of airlines and promote connectivity by ensuring that airlines are not penalised unnecessarily and do not lose their slots given they have no influence or control over the conflict in the Middle East or the consequential fuel supply issues.
>
> …"

26. Mr Schmit says the practical effect of the 2026 Regulations is that airlines will be able to return up to 10% of their least profitable slots irrespective of whether there are fuel shortages. He says Gatwick would lose revenue of between £28 million and £46 million. Ground crew and retailers at Gatwick airport would also lose revenue as a result of reduced passenger numbers.

27. He also says that the 2026 Regulations will distort the competitive European airport market. The ability of airlines to reduce capacity at English airports provides an incentive to redirect capacity to other European airports where the 2026 Regulations do not apply.

Equality Act 2010 – public sector equality duty

28. Section 149(1) of the Equality Act 2010 creates the public sector equality duty. It states:

> "A public authority must, in the exercise of its functions, have due regard to the need to—
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

The facts

Gatwick airport

29. Gatwick is the second busiest airport in the United Kingdom. It handled 42.8 million passengers last year. One of its principal sources of revenue is charges paid by airlines

for use of the airport infrastructure. It charges approximately £20 per departing passenger and between £300 and £1,500 for take-off and landing, depending on the season, the time of day and the type of flight.

Conflict in the Middle East and closure of Strait of Hormuz

30. On 28 February 2026 hostilities broke out between the United States/Israel and Iran. The European Union Aviation Safety Agency issued a Conflict Zone Information Bulletin which recommended that airlines should not operate within the affected airspace of Iran, Iraq and Lebanon, and should exercise caution when operating within the airspace of other countries in the Middle East.

31. The conflict resulted in the closure of the Strait of Hormuz in early March 2026. The Strait is strategically important for the transport of oil and petroleum products. Its closure gave rise to concerns about the resilience of global fuel supply, including the supply of jet fuel to the United Kingdom.

Government contingency planning

32. During March and April 2026, the Government undertook contingency planning. In early April 2026, Government engaged with industry about United Kingdom fuel supply and storage. Officials identified risks to fuel prices, the reliability of airline schedules, potential disruption to passengers, longer flight times and reduced passenger demand.

33. Officials considered three broad options for addressing the risks. The first was to extend the definition or application of justified non-utilisation of slots. That option was not pursued because it was not clear that there would in fact be fuel shortages, and it would not provide sufficient flexibility to address the broader risks. The second option was to introduce emergency primary legislation conferring new powers on Ministers in relation to airport slots. This was not pursued because it was thought that it might compromise longer term policy. The third option was to use the power in section 14 of the 2023 Act to make regulations to permit airlines to hand back slots for the summer 2026 and winter 2026 seasons without prejudicing their future slot allocations. That was the option which officials pursued.

34. On or around 24 April 2026, officials prepared an internal analysis of whether there was a power to make the proposed regulations under section 14 of the 2023 Act. That analysis addressed whether the proposed regulations would increase the regulatory burden within the meaning of section 14(5). The analysis recorded the view that the proposed measures had beneficial effects for airlines, including by protecting their ability to preserve historic slot rights while responding to disruption, and concluded that it would not increase the regulatory burden. The analysis did not set out a detailed assessment of costs or detriments to Gatwick or other airport operators.

Proposal and consultation

35. On 29 April 2026, officials sent a submission to the Secretary of State. The submission sought agreement to consult on a proposal for a provision to permit airlines to hand back 10% of their slots for the summer 2026 and winter 2026 seasons. The proposal responded to requests and concerns from airlines. It was intended to allow airlines to

return a proportion of their allocated slots without the returned slots counting against the 80 per cent minimum usage requirement. Officials proposed that consultation should begin on 5 May 2026 and end on 8 May 2026. The submission also informed the Secretary of State that, subject to the policy being taken forward, airlines could begin handing back slots before the statutory instrument was laid. On 30 April 2026, there was pre-consultation engagement with members of the aviation industry. On the same day the Secretary of State agreed that there should be a consultation, but the consultation period was shortened so that it would close on 8 May 2026.

36. On 5 May 2026, the Department for Transport issued a consultation letter to industry stakeholders. The consultation proposed the introduction of a slot hand back provision for the summer 2026 and winter 2026 scheduling seasons. It stated that the proposed regulations would be made using powers under the 2023 Act, which would expire on 23 June 2026. Responses were requested by 11.55pm on 8 May 2026. The consultation letter said:

> "Since the closure of the Strait of Hormuz, the Government has been closely monitoring UK jet fuel stocks and working with airlines, airports and fuel suppliers to understand impacts and what Government can do to ensure passengers keep moving and businesses are supported. Whilst there is currently no shortage of jet fuel, we recognise that industry is facing challenges in delivering operations as planned due to wider impacts of the conflict in the Middle East. We want to support the industry in planning operations for remainder of Summer 2026 season and for the upcoming Winter 2026 season.
>
> To this end, the Government is considering implementing a slot hand back provision for Summer 2026 and the upcoming Winter 2026 season. The hand back provision will provide an overall maximum of 10% in-season hand back for Summer 2026 and Winter 2026 season respectively. For each season, up to 5% will be required to be returned by a set date and the remaining 5% will be flexible provision which airlines could make use of if needed at any point throughout the remainder of the season. Airlines will only be able to hand back slots under this provision if passengers are given 14 days-notice of the cancellation of the corresponding flights. Any slots that are handed back would be treated as if they had been operated for the purpose of assessing the 80% slot usage requirement. The coordinator will not be permitted to reallocate slots that are handed back.
>
> Final decisions as to whether to proceed with this measure, and the details of percentages and dates, will be made in light of responses to this consultation. These will then be confirmed in a letter to industry stakeholders, and in a Statutory Instrument (SI) which would be laid before Parliament as soon as possible following prorogation. The SI would be made using powers in the Retained EU Law (Revocation and Reform) Act 2023 which will expire on 23 June 2026.

> There would be no change to other slots rules which would remain as currently set out in Regulation 95/93, as amended.
>
> To help inform consideration of this proposal, please could you provide your views on the following questions:
>
> Do you have any evidence that the current slot rules are affecting airlines' ability to schedule and operate flights for the Summer 2026 season?
>
> Do you have any evidence that the current slot rules will affect airlines' ability to schedule and operate flights for the upcoming winter 2026 season?
>
> Do you agree with Government providing alleviation through a hand back provision?
>
> In your view, how would the hand back provision described above support operational planning?
>
> We propose to cap the number of slots which can be handed back at 10% of slots held by an airline at a particular airport:
>
> Do you agree that a limit on the number of slots which can be returned is sensible, and
>
> Is 10% of slots held at a particular airport the right limit?
>
> Do you have any views on when this measure should come into effect?"

37. Fifty-nine responses were received. Thirty eight were from airlines, including passenger and cargo operators. Nine were from airports, including Gatwick. The remaining twelve were from other stakeholders, including Unite the Union, the London Borough of Ealing and Rusper Parish Council. The majority of airline respondents supported the proposal, although some considered that a 10% cap did not go far enough and suggested that 20% would provide more useful flexibility. The airport respondents unanimously opposed the proposal. Gatwick said that section 14(5) of the 2023 Act prevented the Secretary of State from taking the proposed action, and that the time for consultation responses was too short, the consultation materials were inadequate and the questions were framed in a leading way. As to the substance of the consultation, it said:

> "Government has confirmed that there is currently no fuel shortage, with strong visibility for at least the next four weeks. Introducing blanket slot alleviation in these circumstances would not benefit passengers, who may potentially lose thousands of pounds on pre-booked hotels, holidays and flights; would not address any future jet fuel supply disruption; and would instead only add further commercial impacts on airports who employ thousands of people, many from their local communities.

> Such a substantial intervention at this point would distort an otherwise functioning independent market and damage consumer confidence. The existing regulatory framework is already sufficient. The 80:20 slot rule together with the Justified Non-Utilisation of Slots (JNUS) framework under Regulation 95/93 provides targeted and proportionate protection where flight operations are genuinely prevented by unforeseen, unavoidable disruptions (including fuel supply crises) without resorting to blanket alleviation. ACL's own published guidance (version 8.0, April 2026) confirms that any cancellations directly attributable to a jet fuel shortage will qualify for JNUS relief. This means that if war or other extraordinary events cause an actual fuel supply shortfall requiring flight cancellations, airlines' historic slot rights would already be protected under existing law. By contrast, cancellations driven purely by higher fuel costs, essentially commercial decisions, are rightly excluded from JNUS. The existing framework is evidence-based, well understood by industry and avoids distorting capacity where no shortage exists."

38. IATA responded to the consultation and stated it supported the Government's proposed approach in principle. Its response stated that, although there was no confirmed fuel shortage, early intervention was preferable to reactive disruption later in the season. It said that the existing slot framework did not provide airlines with sufficient forward looking flexibility to adjust schedules in response to emerging systemic fuel risks. It described justified non-utilisation as reactive and unsuitable for network level planning before shortage conditions had crystallised. IATA also stated that the United Kingdom was particularly exposed because of its reliance on imported jet fuel. It referenced reports that 78% of United Kingdom jet fuel demand was imported in 2024 and that a substantial proportion of imports came from the Middle East. IATA supported a cap but said that 10% was unlikely to be sufficient and that a higher cap of 20% would provide more effective headroom. It also asked for early commencement, because summer operations were already under way and winter planning was already taking place.

39. None of the respondents suggested that any issue arose under the Equality Act 2010 or that any specific steps were required to discharge the Secretary of State's public sector equality duty under section 149 of that Act.

Consideration of consultation responses and decision

40. After the consultation closed, officials prepared a submission to the Secretary of State. The submission summarised the consultation responses and sought agreement to proceed with the proposed policy. It recorded that respondents were divided. It also recorded that airports opposed the proposal, and that the majority of airline respondents supported it. Officials proposed that the measure should proceed, but with a change from the proposal consulted on. The original proposal had included a prohibition on the reallocation of slots handed back under the alleviation measure. Following consultation, that prohibition was removed. The removal of the prohibition was intended to address a principal concern raised by airports, because it meant that returned slots could, in principle, be reallocated for use during the relevant season.

41. On 18 May 2026, the Secretary of State said she was "content to agree a 10% slots hand-back provision for the summer 2026 and winter 2026 seasons". Later on the same day, a further ministerial submission was sent to the Secretary of State. That further submission identified as "the issue" the need for a Statutory Instrument to be made to implement the Secretary of State's decision. The Secretary of State's approval was sought to lay the draft Statutory Instrument the following day. The submission stated:

> "no provision may be made in relation to a particular subject area unless it is considered that the overall effect of the changes made in that area do not increase the regulatory burden. The relevant area in this context is airport slots. It is not considered that the temporary alleviation introduced by this instrument adds to the regulatory burden."

42. The submission was accompanied by the draft regulations, a draft Explanatory Memorandum and an Impact Note. The draft regulations stated, at the outset:

> "The Secretary of State considers that the overall effect of the changes made by the Regulations in relation to airports slot allocation does not increase the regulatory burden..."

A footnote referred to section 14(5) of the 2023 Act.

43. The draft Explanatory Memorandum said:

> "This Instrument is made in exercise of powers in section 14(3) of the [2023 Act]. Section 14(3) powers give the UK Government the ability to revoke and to replace any secondary direct assimilated law with any alternative measure the Government considers appropriate provided there is no increase in regulatory burden.
> …
> There is no increase in regulatory burden as a result of enabling airlines to return a proportion of slots they have been allocated for the summer 2026 and winter 2026 seasons. The alleviation does not create or act as an obstacle to trade, nor does it create a barrier for efficiency and profitability…"

44. It also said that the alleviation would help protect the financial viability of airlines and promote connectivity by ensuring that airlines were not penalised unnecessarily and did not lose slots because of the Middle East conflict and consequential fuel supply issues.

45. The draft impact assessment set out the costs and benefits of allowing airlines to return slots. The benefits were that it would enable incumbent airlines to avoid the financial costs of operating flights that are not financially viable, that it would avoid the environmental costs that would arise if airlines would otherwise operate "ghost flights", that it would make it easier to pick up existing connectivity after the end of the Iran conflict, and that there would be fewer last-minute cancellations for consumers. The costs would be a loss in competition as a result of it being more difficult for new entrants to acquire slots, and loss of airport revenue. The document also referred to minor administrative costs for ACL.

46. On 19 May 2026, the Secretary of State indicated that the draft regulations should be laid before Parliament. They were laid before Parliament on 20 May 2026. The draft Regulations were subject to the affirmative resolution procedure. They were debated in the House of Commons on 9 June 2026 and approved on 10 June 2026. They were debated in the House of Lords on 10 June 2026 and approved on 15 June 2026.

47. The 2026 Regulations were signed by a Minister on 17 June 2026. They came into force on 19 June 2026. They will cease to have any practical effect at the end of the winter 2026 scheduling season, on 27 March 2027.

Return of slots under 2026 Regulations

48. IATA says that fuel costs have increased by almost 40% since last year. That, together with other war-related airspace disruptions, has halved expected airline profitability. Airlines have made operational, scheduling and commercial decisions in reliance on the 2026 Regulations and related guidance from ACL.

49. I was told that, as at 7 July, 3,322 slots have been handed back by a total of 29 airlines, of which 368 slots have been handed back by 6 airlines at Gatwick.

The claim for judicial review

50. On 11 June 2026, Gatwick sent a pre-action protocol letter of claim to the Government Legal Department. It advanced what are grounds 1 and 2 of the present claim, but made no mention of the public sector equality duty. It asked for a response by 5pm on 15 June 2026 and requested an urgent meeting with the Department for Transport by 5pm the following day. The Department for Transport responded on 15 June 2026, contesting Gatwick's proposed grounds of challenge and indicating that, as the Parliamentary process was expected to finish imminently, the 2026 Regulations would be signed on 17 June 2026 and would come into force on 19 June 2026.

51. After receiving the response, Gatwick informed the Government Legal Department shortly after midnight on 17 June 2026 that it intended to file an urgent claim for judicial review and an application for urgent consideration. Gatwick said that it would seek interim relief to restrain the Secretary of State from making the 2026 Regulations or, alternatively, suspending them pending determination of the claim, and that it would seek directions for an expedited rolled up hearing.

52. Gatwick issued its claim for judicial review on 17 June 2026, the same day on which the 2026 Regulations were made. The claim as issued challenged the decision to make the 2026 Regulations under grounds 1 and 2. Gatwick sought urgent interim relief. On 17 June 2026, Garnham J made an order requiring the Secretary of State to file a response by midday on 18 June 2026. The Secretary of State filed written submissions and evidence from Mr Silk. The Secretary of State opposed the grant of interim relief and submitted that the Court did not have sufficient information to suspend secondary legislation which had been approved by both Houses of Parliament and was due to come into force on 19 June 2026. The Secretary of State also submitted that affected airlines and other stakeholders had not yet had a proper opportunity to be heard.

53. On 18 June 2026, Chamberlain J declined to order immediate suspension of the 2026 Regulations without a hearing. He directed that the interim relief application be

considered at a hearing on 22 June 2026 and required notice to be given to representatives of every airline operating from Gatwick Airport and to IATA.

54. On 20 June 2026, the claimant applied to withdraw the interim relief application. Chamberlain J granted permission for the interim relief application to be withdrawn and formally vacated the hearing. He granted IATA permission to intervene, and made directions for a rolled-up hearing to determine the application for permission to claim judicial review and, if appropriate, the substantive claim.

55. British Airways and TUI each filed an Acknowledgement of Service as interested parties in the case, and filed written submissions in support of the Secretary of State's defence of the claim. No other airline has filed an Acknowledgement of Service or has sought to take part in the proceedings. Airlines for America wrote to the Government Legal Department on 2 July 2026 asking that its support for the Secretary of State, the interested parties and IATA be drawn to the Court's attention. It explained that it represented the North American airline industry, that its members operated to and from United Kingdom airports, including Gatwick, and that its members would be directly affected by any decision to quash the 2026 Regulations. It said that it had received notice of the claim only on 25 June 2026 and had not been able to complete its internal process and instruct lawyers before the deadline for intervention.

Submissions

Whether the claim has been brought in time

56. David Elvin KC, for the Secretary of State, submits that the claim has not been brought in time because it was not brought promptly after the grounds for the claim first arose. He says that ground 2 arose on 8 May 2026 when the flawed consultation concluded and that the claim on that ground should have been brought promptly after 8 May. Ground 1 arose on 18 May 2026 when the Secretary of State decided to lay the draft regulations before Parliament having, on her case, concluded that they did not increase the regulatory burden, and that the claim on that ground should have been brought promptly after 18 May. He submits that the requirement for promptness in this context, where third party rights would be immediately affected once the 2026 Regulations came into force, means that the claim should have been brought within a matter of days. Mr Elvin's submissions were supported by Mr Lawson for British Airways, Conor McCarthy for TUI and John Kimbell KC for IATA.

57. Malcolm Birdling KC, for Gatwick, responds that the grounds for bringing the claim did not arise until the decision which is under challenge, which was the decision to make the 2026 Regulations. That decision was made on 17 June 2026 when the regulations were signed by a Minister on behalf of the Secretary of State. The claim form was lodged the very same day. It was therefore, on any view, in time.

Ground 1: Regulatory burden

58. Mr Birdling submits that the Secretary of State could not lawfully use the power to make regulations under section 14(3) of the 2023 Act unless she considered that the overall effect of the changes would not increase the regulatory burden. This did not happen. The Secretary of State was not told about the condition when she authorised the consultation or when she made the final policy decision, and was not told that

Gatwick had objected that the regulatory burden would be increased. The reference to the regulatory burden in the submission of 18 May was too late, too cursory, and incapable of curing the earlier defect. The Secretary of State failed to take account of the financial impact that the 2026 Regulations will have on Gatwick and others, which substantially increases the regulatory burden. If the Secretary of State did address her mind to the issue, then it was irrational to conclude that the regulatory burden was not increased. Further, the 2026 Regulations do not create a voluntary scheme. Instead, they amend a compulsory statutory regime governing coordinated airports. The amendments to that scheme, and the consequences of choices made by airlines pursuant to those amendments, are binding on Gatwick.

59. Mr Elvin submits that the Secretary of State did lawfully consider the relevant statutory condition and was entitled to conclude that there was no increase in the regulatory burden. The relevant material was put before her in the 18 May submission, which was the relevant stage because it was at that point that she was deciding whether to put the draft regulations before Parliament. In any event, the 2026 Regulations create a voluntary scheme and therefore, by application of section 14(6), are not to be treated as increasing the regulatory burden. The 2026 Regulations do not compel any airline to hand back slots, do not punish any airline for declining to do so, and do not alter the position of an airline that chooses not to participate. The fact that the broader slots framework is compulsory does not prevent an optional alleviation mechanism within it from being a voluntary scheme.

60. Mr Lawson, Mr McCarthy and Mr Kimbell support the submissions advanced on behalf of the Secretary of State. Mr Lawson argues that the 2026 Regulations do not alter the 80:20 rule itself (which is the rule that causes the impact on profitability which is Gatwick's primary concern) but instead provides optional alleviation for carriers that hand back a limited proportion of their slots. Gatwick's alleged losses are the indirect commercial consequences losses of the regulatory regime rather than direct regulatory costs. Mr Kimbell similarly says that the 2026 Regulations are voluntary in nature because they assist airlines affected by the Middle East crisis but do not compel any airline to return any slots. They all emphasise that the measure is time-limited, operationally practical, and directed to preserving planning certainty and connectivity rather than increasing the regulatory burden.

Ground 2: Consultation

61. Mr Birdling accepts that there was no statutory duty to consult, but says that having decided to consult the Secretary of State was required to do so fairly. Gatwick says that the consultation was unlawful because it was conducted with excessive haste, gave insufficient information, and was not conscientiously taken into account before the decision was made. The four-day period was manifestly inadequate for a major legislative change affecting coordinated airports, airlines, passengers and airport-related businesses. It was impossible in that time for consultees to gather evidence, prepare financial analysis, or assess the impact on airport operations, ground handlers, retailers and wider capacity allocation. The consultation material did not permit an intelligent response. It failed to identify the statutory condition under section 14(5) of the 2023 Act and failed to explain why the Secretary of State provisionally considered that condition to be satisfied, and failed to invite representations on whether the proposed 2026 Regulations would increase the regulatory burden. The consultation responses were not conscientiously considered. They were considered within a very

short period, the submission to the Secretary of State did not draw attention to Gatwick's argument that the statutory condition was not satisfied and the summary placed before her failed properly to address burdens on airports and other affected third parties.

62. Mr Elvin responds that the consultation was lawful and fair in the circumstances. It was a targeted consultation with sophisticated industry participants who were familiar with the slots regime and with the previous slot alleviation measures during covid. It was preceded by industry engagement and was conducted in an urgent operational context, against the background of Middle East disruption, potential fuel supply concerns, the need for airlines to plan schedules prospectively, and the impending expiry of the statutory power. The consultation gave sufficient information for consultees to respond intelligently. It was not necessary to provide a detailed exposition of the existing slots regime, the justified non-utilisation framework, or past alleviation measures, because those matters were well known to consultees. Nor was the Secretary of State required to provide a completed impact assessment in advance: the purpose of the consultation was to obtain evidence about potential impacts before finalising the policy. The number, detail and quality of the responses show that the process achieved its purpose. Those responses were properly taken into account. That is demonstrated by the decision to change the proposal, in the light of the consultation responses, by removing the prohibition on reallocating handed-back slots. The consultation was plainly not so unfair as to be unlawful.

63. British Airways, TUI and IATA again support the Secretary of State's case. Mr Lawson says that Gatwick's complaint about lack of time is weakened by the fact that, even weeks later, it has not produced detailed additional evidence showing what would have been submitted if more time had been allowed.

Ground 3: Public sector equality duty

64. Gatwick applies to add this as a new ground of claim. Mr Birdling says that the potential for this ground to be advanced only arose on Friday 26 June 2026 when the Secretary of State disclosed the documentation that relates to the decision-making process. A request for disclosure of that material in the pre-action letter of claim was refused. Gatwick acted as fast as it reasonably could following 26 June 2026. It raised the issue in its Reply which was filed on Tuesday 30 June, just two working days later. It then formally applied for permission to amend the grounds of claim on 5 July.

65. Mr Elvin opposes the application. He says it is made far too late, that nobody had at any earlier stage raised any issue under the 2010 Act, and that the ground that is now sought to be advanced is without any merit. Gatwick is not affected by any failure to comply with the 2010 Act and it has not shown what practical steps the Secretary of State should have taken.

Is the claim in time?

66. A claim form for judicial review must be filed promptly and, in any event, not later than 3 months after the grounds to make the claim first arose: CPR 54.5(1).

67. The time period that is permitted by the obligation to act promptly is fact sensitive and context specific. On the facts of this case, it would not have been prompt to wait weeks

or months before filing a claim. The 2026 Regulations apply only to the 2026 seasons. The summer season was well underway before the underlying policy decision was made. Before the 2026 Regulations came into force, airlines were already returning slots in the expectation of their enactment and that the returned slots would not impact on the usage calculation. From the point that the 2026 Regulations came into force, airlines were entitled to return slots in the expectation that would not impact on the usage calculation. If the 2026 Regulations are quashed, then that expectation will be defeated unless provision is made to qualify the effect of a quashing order: section 29A(1) of the Senior Courts Act 1981. In this type of context, where the relief sought by a claimant potentially impacts on acquired third party rights, the requirement for promptness means that any claim must be issued within a period of days: *R v Secretary of State for Trade and Industry ex parte Greenpeace Limited* [1998] Env LR 415 *per* Laws J at 424 – 425, *R (British Gas Trading Ltd) v Secretary of State for Energy Security* [2025] EWCA Civ 209; [2025] 1 WLR 3342 *per* Zacaroli LJ at [44].

68. I do not accept the Secretary of State's submission that the grounds to make the claim first arose, so far as ground 2 is concerned, on 8 May 2026 when the consultation concluded. The relevant decision that is challenged is not the decision to hold the consultation but the decision to make the 2026 Regulations. That decision had not been made at the time of the consultation, even though the general policy direction had been set. I recognise that in *R (Draper) v Lincolnshire County Council* [2015] EWHC 2694 (Admin) McGowan J held that a challenge to a consultation process was out of time, and that time was treated as running from the consultation rather than the subsequent substantive decision. However, as Elisabeth Laing J explained in *Tilley v Vale of Glamorgan Council* [2015] EWHC 3194 (Admin) at [70] – [71], "*Draper* is a special decision on its facts." This case, like *Tilley*, is a case where the consultation was not of itself a decision that had any practical legal consequences. It would not have been realistic to have brought a claim on 8 May 2026 when no decision to make the 2026 Regulations had yet been made and there was still the potential for any deficiencies in the consultation process to be cured.

69. Formally, the decision to make the 2026 Regulations was not made until 17 June 2026 when they were signed. The claim form was filed promptly thereafter because it was filed the same day. It appears that the claim form may even have been filed before the regulations had been signed: it refers to the Secretary of State having indicated that she intended to make the 2026 Regulations. So, if the trigger date for time running under CPR 54.5(1) is 17 June 2026 (or any later date), the claim is in time.

70. Alternatively, if the trigger date is 18 May 2026 when the Secretary of State decided to lay the draft regulations before Parliament then the claim form was not filed promptly, because it was not filed until a month later. In this context, that is not compatible with the obligation to act promptly. On a realistic appraisal of the decision-making process, the decision to lay the draft regulations before Parliament was, so far as this claim is concerned, the critical decision. It was at this point that the Secretary of State says that she addressed her mind to the question of the regulatory burden and concluded that it was not increased by the proposed regulations. The principal ground of challenge is aimed at that aspect of the decision-making process. Once the decision was made to lay the draft regulations before Parliament, it was practically inevitable that the 2026 Regulations would then be made so long as they were approved by both Houses of Parliament.

71. It may have been open to Gatwick to file a claim at that point, before the affirmative resolution procedure took place. However, the 2026 Regulations did not have any legal effect before they came into force on 19 June 2026. The authorities point in different directions as to whether, on these facts, the trigger date is 18 May 2026 or 19 June 2026: *R (Amey) v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 3132 (Admin) *per* Lang J at [43] – [45]. At [45], Lang J said:

> "Having considered the authorities and the submissions with care, in my judgment, the better view is that time ran from the date on which the 2020 Regulations came into force, namely, 20 March 2020, which is when the claimants became directly affected in law by its provisions. By this date, the 2020 Regulations had been published, so they were readily available to the public and they had been laid before Parliament, so it was known that there was not going to be any Parliamentary challenge. The date of coming into force is set out in the Regulations, thus providing clarity and certainty to all."

72. It is appropriate to take the same approach as that taken by Lang J following her careful consideration of conflicting authorities. In addition to the reasons given by Lang J, that approach accords with the reasoning of the House of Lords (albeit in the different context of a grant of planning permission) in *R (Burkett) v London Borough of Hammersmith and Fulham* [2002] UKHL 23; [2002] 1 WLR 1593 *per* Lord Steyn at [39] - [51]. Moreover, the powers under section 29A(1) of the Senior Courts Act 1981 to qualify the effect of a quashing order enable the court to address the consequences for third parties that would otherwise arise from the retrospective impact of an unqualified quashing order. That makes it possible to address the risk of injustice that would otherwise arise from treating the trigger as the date on which regulations come into force, rather than the date on which they are made, or the date on which they are laid before Parliament.

73. Accordingly, this claim was brought in time.

Ground 1: Regulatory burden

Structure of section 14(5) and (6) of the 2023 Act

74. There is an inter-relationship between sections 14(5) and (6) of the 2023 Act. Section 14(5) requires the Secretary of State to consider whether the regulatory burden is increased. Section 14(6) provides that the regulatory burden is not increased by a voluntary scheme. Section 14(5) imposes a subjective test, albeit a test that is susceptible to public law review. It is not for the court to decide whether the regulatory burden is increased. That decision is reserved to the Secretary of State. The role of the court is limited to a review of the Secretary of State's decision on public law grounds. The language of section 14(6) is different. It does not require the Secretary of State to consider whether the 2026 Regulations create a voluntary scheme. It instead creates an objective rule that a voluntary scheme is not to be regarded as increasing the regulatory burden. If, on an objective analysis, the 2026 Regulations create a voluntary scheme then section 14(5) constrains the Secretary of State's assessment of whether the regulatory burden is increased. In that event, on a strict reading of section 14(5), the Secretary of State must still address her mind to the issue, but is bound to conclude that

the regulatory burden is not increased. Conversely, if the 2026 Regulations do not create a voluntary scheme then it remains for the Secretary of State to assess whether the regulatory burden is increased.

Do the 2026 Regulations create a voluntary scheme?

75. The Slots Regulation created a regulatory scheme for the management of slots at coordinated airports. That scheme is compulsory. It removes a coordinated airport's commercial freedom as to the allocation of its capacity. Airlines must use 80% of their slots, or justify their non-use, or else forfeit their future allocation rights. ACL must administer the scheme. Airports are bound by the scheme to facilitate (and charge for) the movements of aircraft only in accordance with allocated slots.

76. Section 14(3) of the 2023 Act gives rise to a broad power to revoke and replace assimilated EU law where that does not increase the regulatory burden. The Act contemplates that the use of this power may have the effect of creating a voluntary scheme: section 14(6).

77. The 2026 Regulations do not replace the Slots Regulation in their entirety. They only replace article 10(3). To that extent, I accept Gatwick's submission that the practical effect of the 2026 Regulations is to amend a pre-existing binding framework for the compulsory allocation of slots at coordinated airports by which Gatwick is bound. That does not, however, answer the question of whether the replacement provisions create a voluntary scheme. A voluntary scheme may operate within the wider context of a mandatory regulatory framework. Nothing in the 2023 Act suggests otherwise. Accordingly, I do not accept Gatwick's submission that because the 2026 Regulations amend a pre-existing mandatory scheme they do not create a voluntary scheme. That submission conflates the scope and effect of the 2026 Regulations and the scope and effect of the Slots Regulation. For the purpose of determining whether the 2026 Regulations create a voluntary scheme the focus must be on the effect of the 2026 Regulations rather than the effect of the Slots Regulation.

78. The replacement for article 10(3) itself (which is now article 10(3A)) maintains the effect of the original article 10(3). That allows airlines (permanently) to return slots before the start of the season. Article 10(3A) does not therefore amount to a new provision.

79. The material effect of the 2026 Regulations is to add the new articles 10(3B) and 10(3C). Those two provisions allow airlines to return up to 10% of their slots for the 2026 seasons only. To this extent, the 2026 Regulations create a new scheme. That scheme gives airlines the right, under certain conditions, to return up to 10% of their slots, but it does not require airlines to do so. So long as the conditions for doing so are satisfied, airlines may return slots without taking any compulsory step beyond notifying ACL of their choice. If airlines do not wish to return slots then there is nothing they need to do. Airlines may choose whether or not they take part in the scheme. No airline is required to return a slot. No airline is penalised for declining to do so. Whether or not an airline takes part in the scheme, its position remains governed by the ordinary minimum usage requirement within the Slots Regulation. The only difference is that if the airline has taken part in the scheme introduced by the 2026 Regulations then the baseline figures for calculating slot usage leave returned slots out of account. The fact

that the voluntary mechanism operates within a wider mandatory regulatory framework does not prevent it from being a voluntary scheme.

80. The choices made by airlines have consequential effects. Passengers may need to make alternative travel arrangements; ACL may need to re-allocate slots; retail outlets at the airport may have less footfall; baggage handlers may have less work. Some of these effects may impose mandatory obligations on third parties: most obviously on ACL. That does not, however, mean that the scheme is anything other than voluntary. The scheme is the ability of airlines to return slots, and that scheme is entirely voluntary. Any compulsory obligations that flow from the operation of the scheme flow from the underlying and existing mandatory framework imposed by the Slots Regulation, rather than from the scheme.

81. That conclusion is consistent with the evident purpose of section 14 of the 2023 Act. A voluntary scheme will often operate in a regulated field and may have consequences for other participants in that field. If the existence of a mandatory background regime or framework, or mandated consequences of choices made under the scheme, is enough to prevent the scheme from being voluntary, then section 14(6) would be unduly confined.

82. Accordingly, the 2026 Regulations create a voluntary scheme. They are not to be regarded as increasing the regulatory burden.

What is encompassed within "regulatory burden"?

83. Strictly, the Secretary of State was required to address the question of the regulatory burden under section 14(5) even if the 2026 Regulations are properly to be regarded as a voluntary scheme.

84. It is common ground that the words "particular subject area" in section 14(5) can be taken as meaning "the allocation of slots". That means that the issue for the Secretary of State under section 14(5) was whether she considered the changes made by the proposed regulations in relation to the allocation of slots did not increase the regulatory burden.

85. The parties disagree about what falls to be taken into account when assessing the regulatory burden. Ultimately, the question of whether the regulatory burden was increased was for the Secretary of State, subject to the court's review. At the margins there may be questions of evaluation for the Secretary of State as to what does or does not amount to a regulatory burden. However, I accept Mr Birdling's submission that the question of what is capable of amounting to a regulatory burden is an issue of law for the court.

86. It is common ground that the administrative cost of implementing the changes to the regulatory regime that are made by the 2026 Regulations are part of the regulatory burden. That includes the cost to the airline of informing ACL that it is returning a slot, the costs incurred by ACL of administering that return and, if applicable, reallocating the slot, and any costs incurred by the airport in the course of that administrative process. The airport is potentially required to provide information to ACL and to facilitate meetings and to help with enforcement action. All of the costs relating to that may properly be considered a part of the regulatory burden. Also, if complying with

the obligations to provide information or facilitate meetings or help with enforcement action in some way amount to an administrative inconvenience, or present an obstacle to trade or innovation or to efficiency or productivity or profitability, then that too would count. These regulatory burdens are unlikely to be substantial because the administration involved in implementing decisions made under the 2026 Regulations is itself limited. There is no evidence to suggest otherwise.

87. The issue between the parties is whether the entire financial consequences of the 2026 Regulations on an airport's profits is properly to be regarded as a regulatory burden. I do not consider it is. The adjective "regulatory" qualifies the noun "burden". It is thus not the entire burden that falls to be taken into account, but only that part of the burden that amounts to a regulatory burden. The phrase "regulatory burden" does not mean the same as the burden that is caused by the regulatory regime. The former refers to a burden of a particular type. The latter refers to a burden that has a particular cause. The burden that is caused by a regulatory regime will include a regulatory burden, but it may also include consequential burdens that are not regulatory burdens. The indirect consequential financial cost to an airport of the 2026 Regulations is a burden (section 14(10)(a), and possibly 14(10)(c) and 14(10)(d)). It is also a burden that is caused by the regulatory regime. It is not, however, a regulatory burden. That is because it does not arise from compliance with a legal obligation, restriction, administrative step or sanction imposed on the airport by the 2026 Regulations, but from commercial consequences of choices made by airlines under the option conferred by those Regulations and the effect of the Slots Regulation.

88. This approach is supported by a comparison of the language of the 2006 Act and the 2023 Act. They are both dealing with a similar subject matter, and the later Act amends the former Act. They both adopt similar definitions to the word "burden". The language of section 14(10)(a), (b), (d) and (e) of the 2023 Act is identical to the language of section 1(3)(a), (b), (c) and (d) of the 2006 Act. There is, however, a clear difference in the ambit of section 1 of the 2006 Act and section 14 of the 2023 Act. The former permits the removal of any burden: section 1(1), (2). The latter only allows the removal and replacement of assimilated EU law where the overall effect of the changes does not increase the regulatory burden: section 14(3), (5).

89. It is therefore clear both from the natural meaning of the language, and from the statutory context of the 2006 Act, that the term "regulatory burden" has a narrower meaning than the term "burden." On Gatwick's approach to the construction of section 14(5) there would not be any material difference between the words "regulatory burden" and the word "burden". Mr Birdling contends that a narrower approach to the correct interpretation of "regulatory burden" would lead to absurd consequences and that the narrower approach should therefore be rejected: *R (PACCAR) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 WLR 2594 *per* Lord Sales at [43]. He says it would permit the Secretary of State to introduce a regime that would permit airlines to return all of their slots at short notice without losing their right to those slots in following seasons. Mr Birdling may well be right that the condition in section 14(5) could be satisfied in such a case, because the Secretary of State could rationally consider that there would be no increase in the regulatory burden even though such a scheme would have disastrous consequences for coordinated airports. It does not, however, mean that the Secretary of State would be free to introduce such a scheme. Section 14(5) is not the only restriction on the Secretary of State. She is also required

to act lawfully, meaning that her decisions must be fair and rational, and compatible with rights under the European Convention on Human Rights (including the right to peaceful enjoyment of possessions under article 1 of the first protocol), and any regulations made under section 14(3) must be subject to the approval of both Houses of Parliament. Mr Birdling's example does not therefore show that the natural interpretation of the words "regulatory burden" would have absurd consequences.

90. The likely intention of Parliament in using the term "regulatory burden" can better be tested by a different example: a widget manufacturer that operates in a sector that is subject to onerous regulation imposed by assimilated law. On the face of it, section 14(3) and (5) would permit the Secretary of State to revoke the assimilated law and impose a lighter touch regulatory regime. But if there was a company that assisted widget manufacturers to navigate the onerous regulatory regime, then that company's loss of profits from the lightening of the regulations would have to be taken into account as a "regulatory burden", potentially preventing the Secretary of State from invoking section 14(3). It is not conceivable that Parliament intended such an effect.

91. Accordingly, the indirect consequential impact on an airport's profitability if, as a result of the 2026 Regulations, there are fewer flights and fewer passengers, is not a regulatory burden.

Did the Secretary of State consider that the overall effect of the changes made under the 2026 Regulations did not increase the regulatory burden?

92. Section 14(5) imposes a condition precedent on the exercise of the power to make regulations. The Secretary of State could not lawfully make the 2026 Regulations unless she considered that the overall effect of the proposed regulations did not increase the regulatory burden. I accept Mr Birdling's submission that this means that the Secretary of State was required consciously and personally to address her mind to this issue: *R (Elgizouli) v Secretary of State for the Home Department* [2020] UKSC 10; [2021] AC 937 *per* Lady Hale at [6] and Lord Kerr at [157] – [158].

93. There is no evidence that the Secretary of State addressed her mind to the impact of the policy proposal on the regulatory burden at the point at which she made the underlying policy decision, which was to be implemented in the 2026 Regulations, or at any earlier stage. She was only informed of that obligation on 18 May 2026, after she had made the underlying policy decision.

94. No contemporaneous document has been disclosed that explicitly and directly shows that the Secretary of State considered the impact of the 2026 Regulations on the regulatory burden. There is no witness statement from the Secretary of State testifying that she did so. Nor is there a witness statement from anybody else to say that she did so. However, the relatively short two page Ministerial Submission of 18 May 2026 set out in clear terms that there was only power to make the 2026 Regulations if it was considered that the regulatory burden would not be increased. The Secretary of State was provided with, as annexes to that submission, the draft regulations, a draft explanatory memorandum and an impact assessment which made it clear (most directly and explicitly at the outset of the draft regulations) that she considered that the overall effect of the changes made by the 2026 Regulations in relation to airports slot allocation did not increase the regulatory burden. This was precisely the statutory pre-condition in section 14(5) to permit regulations to be made under section 14(3). In the absence of

any contrary evidence, it must be taken that the Secretary of State read and understood this material: *R (Hunt) v North Somerset Council* [2013] EWCA Civ 1320; [2014] LGR 1 *per* Rimer LJ at [83], *R (Suffolk Energy Action Solutions SPV Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1796 (Admin) *per* Holgate J at [144], *R (Save Stonehenge) v Secretary of State for Transport* [2024] EWCA Civ 127; [2025] PTSR 726 *per* Sir Keith Lindblom SPT, Stuart-Smith LJ and Lewis LJ at [100].

95. The Secretary of State indicated that the draft regulations should be laid before Parliament. Those draft regulations said in terms that she considered that the overall effect of the changes made by the 2026 Regulations in relation to airports slot allocation did not increase the regulatory burden. In the absence of contrary evidence, this is a sufficient basis to infer that the Secretary of State addressed her mind to the issue that had been put before her. There is nothing positively to indicate that the Secretary of State did not address the matter that was placed squarely before her in the submission. In those circumstances, I infer that the Secretary of State agreed with the advice that she had been given that the 2026 Regulations would not increase the regulatory burden. That took place before the 2026 Regulations were laid, and well before they were made. Considering the process as a whole, it has been demonstrated that the Secretary of State had the statutory condition before her at the relevant stage and that she addressed that condition and that she considered that the condition was satisfied.

Was the Secretary of State's decision irrational?

96. If, as I have decided, the 2026 Regulations create a voluntary scheme then it necessarily follows that the Secretary of State was right to decide that they did not increase the regulatory burden.

97. Even if the 2026 Regulations are not properly to be treated as creating a voluntary scheme, then the Secretary of State was entitled to accept the clear advice of her officials that they did not increase the regulatory burden.

98. The Secretary of State was well aware of the effect of the 2026 Regulations. She had approved the consultation and was aware of the consultation responses. It follows from the wording of the 2026 Regulations that they reduce the regulatory burden on airlines that operate at coordinated airports in England, including Gatwick. Instead of having to ensure that they use 80% of the slots in respect of which no justified non-use reason applies, an airline can prospectively return up to 10% of its slots, and then it only has to use 80% of the remaining slots in respect of which no justified non-use reason applies. The 2026 Regulations remove the financial costs, administrative inconvenience and obstacles to efficiency, productivity and profitability that would otherwise be occasioned by the work necessary to comply with the more onerous regulatory framework of the unamended Slots Regulation. Those all amount to burdens within the meaning of section 14 of the 2023 Act. They are properly to be regarded as a regulatory burden that is alleviated by the 2026 Regulations.

99. The evidence does not quantify the reduction of the regulatory burden on airlines, but it is sufficiently clear that it is significant. By contrast, it is also common ground that the 2026 Regulations impose a regulatory burden on ACL. It will have to administer the returned slots and arrange for any re-allocation of those slots. Again, the evidence does not quantify the cost of this burden, save that Mr Silk says it will amount to "some administrative costs… [which] would be expected to be minor in the context of the

sector." ACL did not raise any concern with the Secretary of State about increased administrative costs, and it has not taken part in these proceedings. There was no suggestion from any party that the regulatory burden on ACL would be particularly onerous.

100. The Secretary of State was aware that the airport operators unanimously opposed the introduction of the 2026 Regulations. She was not aware of the precise impact on the airport operators, but that which can properly be regarded as a regulatory burden is limited. That is because the airport's role in administering the regulatory framework is "essentially passive", limited to the provision of information, arranging meetings and assisting with enforcement action. For the reasons given above, the ultimate consequential net effect on a business' profitability as a result of a regulatory regime is distinct from the direct financial cost of complying with the regime. The concerns that are expressed by Gatwick are not concerned with the financial cost of implementing the regulatory regime but instead with the net financial consequences of that regime. That was not a relevant factor for the Secretary of State to take into account.

101. It was for the Secretary of State to decide whether she had sufficient information to assess whether the regulatory burden was increased. It was for her to decide whether to accept the advice of her officials or whether to ask further questions. Given her background knowledge of the sector and her involvement in this particular issue over a period of weeks, and given the nature of the assessment that was to be made, and the narrow meaning of "regulatory burden", it was reasonable for her to rely on the advice given to her by her officials. There was nothing inaccurate in the summary of the consultation responses or in the summary of the requirements of the 2023 Act. Gatwick has not identified any material factor that the Secretary of State was bound to take into account but which was not drawn to her attention. In the circumstances, she was entitled to rely on the advice of her officials and not to ask further questions: *R (Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin); [2023] 1 WLR 225 *per* Holgate J at [199] – [200].

102. Accordingly, Gatwick has not shown that the Secretary of State's decision was irrational.

Conclusion on ground 1

103. There is a sufficiently arguable case on ground 1 to merit the grant of permission but, for the reasons given above, I refuse judicial review on this ground.

Ground 2: Consultation

104. The Secretary of State was required to act rationally and fairly when gathering information before deciding whether to make the 2026 Regulations. She was not under any explicit obligation to undertake a consultation exercise, but she decided to do so. The consultation exercise formed part of the information gathering for the purpose of deciding whether to make the 2026 Regulations. It was therefore part of the process that was adopted to ensure a fair process and to ensure that the Secretary of State was informed of relevant material. If the consultation was flawed then that is capable of impugning the decision to make the 2026 Regulations on grounds of fairness and/or rationality. However, the consultation was not free-standing, it was part of the overall decision-making process which must itself be considered in the round and in context.

105. The requirements for a fair and rational consultation are well-established: *R v Brent London Borough Council ex parte Gunning* (1985) 84 LGR 168 *per* Hodgson J at 189. The consultation must take place when a proposal is still at a formative stage such that consultation responses are capable of influencing the decision. Sufficient information, and adequate time, must be provided to consultees to enable meaningful and informative responses. The product of the consultation must be conscientiously taken into account.

106. The application of these principles to a particular case is intensely context specific. The relevant context includes the time available to the decision-maker to make a decision, the nature and effect of the proposal that is subject to consultation, the existing level of knowledge of consultees and their capacity to respond.

107. An urgent decision was required. The time available to make a decision was limited. Once the Strait of Hormuz closed in March 2026, there was real uncertainty as to when it would re-open and what the impact would be on air travel. The evidence shows that the Government acted rapidly to assess the likely implications and the options available to mitigate risks. It has not been shown that the Government could, realistically, have embarked on a consultation exercise substantially earlier than it did. So the consultation could not, realistically, have commenced substantially earlier than 5 May 2026. The 2026 summer season had already begun. Any slots returned in accordance with the proposed policy first required at least 14-days notice to be given to passengers. Any regulations had to be made by 23 June 2026 at the very latest, because the power to make regulations only lasted until that date: section 14(9) of the 2023 Act. Regulations could only be made if a draft was first laid before and approved by both Houses of Parliament. Each House of Parliament had to be given sufficient time to consider and debate the issue. Parliament rose for Whitsun recess on 21 May and returned on 1 June. The advice of officials was that this meant that the draft regulations had to be laid before 19 May 2026. This advice has not been, and could not realistically be, criticised. Sufficient time needed to be afforded to consider the consultation responses, to make any adjustments to the policy proposal in the light of the consultation responses, and to prepare the draft regulations. This all meant that the time available for any consultation would inevitably be short.

108. The subject matter of the consultation was technical. Leaving aside the regulatory burden, any decision (including taking no action) was likely to have a substantial impact on airlines, coordinated airports and ACL. There was also the potential for impact on airport retailers, baggage handlers, passengers and others. The proposal was, however, limited in effect, both in terms of its duration and the potential ambit of its impact. It was to last for just 12 months. It would potentially affect, at most, 10% of slots. In its final form (albeit not in the form at the consultation stage), slots could be reallocated so as potentially to mitigate the practical effect on airports.

109. Airlines, co-ordinated airports and ACL were all extremely familiar with the detail of the Slots Regulation and the impact of the closure of the Strait of Hormuz on the operational environment. They were also familiar with the concept of alleviation measures, following the steps that were taken during the covid pandemic. It was not realistic to expect them to provide detailed economic models to forecast the precise impact of the proposal, or any alternatives. However, it was reasonable to expect them to be able to provide the high level information that the Secretary of State was seeking: whether there was evidence that the slot rules would affect the 2026 seasons, whether

a hand back provision was appropriate, how it could support operational planning, the appropriate (if any) limit on the slots that could be returned and when the measure should come into effect.

110. That is the context against which the consultation is to be assessed. The question is not whether a longer process would have been better, or whether more or different questions could have been asked, or whether the questions could have been better framed, or the consultation better designed. The question is whether, viewed as a whole and in its statutory and practical context, and applying the *Gunning* criteria, the consultation was so flawed that the resulting decision was unlawful.

111. Formative stage: The consultation was conducted when the policy proposal was still at a formative stage and when consultation responses could (and in the event did) influence the ultimate decision. To the extent that there is evidence that officials were working on the basis that the proposal would be implemented, that is a reflection of the urgency and the need for contingency planning. It does not show that the outcome of the consultation was a foregone conclusion. The evidence shows that the responses were conscientiously considered. The final form of the draft regulations differed from the proposal in an important respect: the proposed prohibition on the reallocation of returned slots was removed. That amendment responded to concerns raised by Gatwick and other airports. It is inconsistent with any suggestion that the consultation was cosmetic or box-ticking.

112. Sufficient information: The consultation provided consultees with sufficient information to elicit the information that the Secretary of State sought. It explained the proposed hand-back mechanism and invited views on whether alleviation should be provided in that form. It was not necessary for the consultation to rehearse matters already well known to consultees, including the operation of the slots regime and the justified non-utilisation provisions. Nor was the Secretary of State required to provide a complete impact assessment before consulting.

113. The consultation did not make reference to section 14 of the 2023 Act and the condition that the overall effect of the changes should not increase the regulatory burden. It may have been better if it had done so, or if consultees had been asked directly to address the regulatory burden. This omission did not, however, render the decision-making process unlawful. Gatwick, and other airports, were able to explain the burden, including the regulatory burden, that the proposal would put on them. The absence of a separate question framed in the language of section 14(5) did not prevent consultees from making representations on the practical matters relevant to that statutory assessment.

114. Sufficient time: The consultation period was short. Four days would ordinarily be an inadequate period for consultation on a legislative measure of general importance. It would have been possible to ask more questions, or to phrase them in an entirely neutral manner. More information could have been provided to consultees about the options available to Government and about the reasons for the proposal. However, the context is important. There was real urgency to act. The consultation was not addressed to the public at large. It was a targeted consultation of airlines, airports, ACL and other stakeholders. The consultees were sophisticated commercial operators or specialist bodies with knowledge of the slots regime, the minimum usage requirement, the

justified non-utilisation framework, and previous instances of slot alleviation. The proposal was limited in its temporal duration and its practical effect.

115. The evidence also shows that the consultation achieved a substantial response. Fifty-nine responses were received, including responses from airlines, airports and other stakeholders. Gatwick itself was able to make a substantive response, including its objection that the measure would have adverse consequences for airports, that the statutory power should not be used and that the consultation was flawed. That does not prove that this was a model consultation process and that the time allowed was ideal, but it is powerful evidence that the consultees were able to understand the proposal and respond to it.

116. The urgency of the context does not displace the requirements of fairness, but it does form an important part of the context within which the fairness of the process is to be assessed. The practical reality was that any consultation process would have to be compressed.

117. Consideration of responses: The fact that officials considered the responses within a short period does not itself establish unlawfulness. The consultees were specialist bodies; the issues were focused; and the Department had relevant expertise in the subject matter. The claimant has not shown that the time taken meant that material points were incapable of being understood or considered. The Secretary of State was provided with a summary of responses, including the fact that airports had unanimously opposed the measure. The law did not require her personally to read every response or to accept Gatwick's objections.

118. Overall fairness and adequacy of inquiry: It has not been shown that the consultation was flawed. Although it was shorter than would have been appropriate in other contexts, it took place at the appropriate stage when the policy was still being considered, consultees were given sufficient information and sufficient time to respond, and the responses were properly taken into account.

119. As with ground 1, there is a sufficiently arguable case on ground 2 to merit the grant of permission but, for the reasons given above, I refuse judicial review on this ground.

Ground 3: Breach of the public sector equality duty

120. On 5 July 2026, Gatwick issued an application notice by which it sought to amend its grounds of claim by adding a further ground of review. The further proposed ground of review is that the Secretary of State failed to comply with her public sector equality duty under section 149 of the Equality Act 2010.

121. I refuse the application. It has been made too late, only two days before the substantive hearing and after the defendants, the interested parties and the intervener had complied with the court's case management directions and filed all of their statements of case, evidence and written arguments. It would be contrary to the overriding objective to grant the application because it would not be just or proportionate to do so. That is because it adds expense, risks unfairness and possible delay, and because the rules required the grounds to be lodged with the claim form which was filed on 17 June 2026.

122. I do not accept that it was only possible for Gatwick to formulate this ground when it received the Secretary of State's detailed grounds of defence and evidence. That evidence showed that no particular positive steps had been taken to comply with section 149 of the 2010 Act. However, there was never any suggestion that such steps had been taken. There was no mention of the public sector equality duty in the consultation exercise or in the Secretary of State's pre-action response or in any other communication with Gatwick or any other published material concerning the 2026 Regulations. If Gatwick had considered that the policy proposal or the 2026 Regulations raised any issue under the 2010 Act then it could have said so in its consultation response and its pre-action letter of claim. It could have asked what steps had been taken to comply with the public sector equality duty. It did none of those things. Nor did anyone else, including any of those who were consulted (which included a union and a local authority).

123. Allowing the application to amend the claim would be unjust, not only because of the late stage at which it has been raised and the unfair pressure that this puts on the other parties, and not only because there is no good reason for the failure to raise it before, but also because the person within the Department of Transport who was, at the time, directly responsible for ensuring compliance with section 149 of the 2010 Act is not currently available to provide evidence.

124. Further, the proposed ground does not identify how the 2026 Regulations are capable of having a discriminatory effect based on any protected characteristic under the 2010 Act, or how they impact on equality of opportunity between those who share a protected characteristic and those who do not, or how they impact on relations between those who do and do not share a protected characteristic. Nor is it suggested that Gatwick has any protected characteristic (as a corporate entity, it plainly does not) or how Gatwick's interests have been prejudiced by a failure to take any particular step to comply with the public sector equality duty. Nor has anybody, apart from Gatwick, suggested that their interests have been affected, or that the 2026 Regulations create any issue under the 2010 Act.

125. Further, the evidence that has been filed by the Secretary of State shows that the Department of Transport did have regard to its obligations under the public sector equality duty. The submissions to the Secretary of State made reference to the public sector equality duty and positively asserted that the proposed regulations were not within its scope. In the light of this late challenge the Department of Transport has undertaken an equality impact assessment. This states:

> "The Regulations are a technical and time-limited measure relating to the management of airport slots and apply at the level of airports, airlines and the slot allocation process. Having considered the purpose and effect of the Regulations, the Department's conclusion is that the policy does not give rise to identifiable impacts in relation to protected characteristics and that no further equality assessment is required under the 2010 Act."

126. Gatwick has made generalised reference to the potential for an impact of late cancellations of flights on passengers and staff such as baggage handlers, but it has not shown that this assessment is arguably irrational.

127. For all these reasons, I refuse the application to add the proposed new ground of claim.

Relief

128. I have dismissed the claim for judicial review in respect of the pleaded grounds of claim, and I have refused the application to advance a new ground of claim. The question of relief does not therefore arise. If judicial review had been granted on any ground then questions would have arisen as to whether any, and if so what, relief would be appropriate having regard to decisions already made in reliance on the 2026 Regulations, section 31(2A) of the Senior Courts Act 1981, and the powers in section 29A of the Senior Courts Act 1981.

Outcome

129. I refuse permission to amend the grounds of claim to add a claim under section 149 of the Equality Act 2010, as set out at paragraph 2(3) above.

130. I grant permission to claim judicial review on the grounds set out at paragraph 2(1) and 2(2) above, but the claim is dismissed.