Non Discrimination on the Basis of Disability in Air Travel: Proposed Rule  
(Docket No: OST-2004-19482)

Response from the Government of the United Kingdom

Context

1. The British Government appreciates the opportunity to comment on the proposals to extend the requirements of the Air Carrier Access Act (ACAA) to foreign airlines. This response reflects the views of the key UK airlines and airports but does not in any way replace the submissions that they will be sending in their own right in response to this consultation.

2. The first and most important point to make is that the UK - like the USA - is wholly committed to delivering civil rights to disabled people. This is being applied to the transport industries as to other sectors through a combination of law, good practice and guidance.

3. In the aviation field, airlines are not yet subject to the terms of the Disability Discrimination Act 1995, but a Bill now before Parliament will give us the power to bring them within the scope of the law if the current voluntary Code of Practice (a copy of which has been lodged with you) does not result in consistent delivery of high quality facilities and services to disabled air travellers. This will mean, in effect, that the voluntary code is underpinned by law. In addition, the UK industry follows closely the recommendations set down by the European Civil Aviation Conference (ECAC) in the field of facilitation (a copy of DOC 30, Part 1, Section 5 has also been lodged with you).

4. Airports in the UK are already within the scope of our disability discrimination legislation and are covered by the general duties under Part 3 of that Act which prohibit discrimination against and less favourable treatment of disabled people. There is detailed guidance both at UK and European levels which sets down the level of facilities and services which airports should provide to meet the needs of
disabled passengers.

5. In addition, a proposal from the European Commission to introduce legislation to protect the rights of disabled people in air travel has very recently been published. That proposal will lead to a new legal requirement which will apply to the UK and to all other Member States of the European Union. The main elements of the proposed new European legal framework include:

- Outlawing unjustified refusal to carry a disabled passenger;
- Specifying services which must be available to disabled people at airports;
- Obliging airport managing bodies to provide (or secure the provision of) these services;
- Requiring that mobility equipment is carried on board free of charge;
- Obliging airports to provide the assistance needed to ensure that disabled passengers can catch their flights provided that the passenger has given advance notice;
- Requiring Member States to introduce sanctions for non-compliance and mechanisms for enforcement.

6. While many of these provisions are already in common practice in the UK, the European Commission proposal will give them the force of law. In advance of the legal and parliamentary processes through which the proposal must pass it is not possible to be more specific about the detail of the final package of measures. It would however be a reasonable working assumption that it would not differ in significant detail from the proposals outlined above.

Comment

7. We wish to comment both on the broad principles of the proposed Rule Making and on a number of points of detail.

General

8. The key objection that we wish to raise is that the proposals are an unwarranted exercise of extraterritorial jurisdiction. This is most acute in respect of the application of ACAA service requirements to foreign carrier operations taking place entirely outside the US but under the code of a US carrier. But it is also objectionable because the effect of the proposals is to require UK airlines, while operating to and from the sovereign territory of the United Kingdom, to comply with measures stipulated by the United States Government. This is contrary to accepted principles concerning the extent of a State's legislative competence.
9. We note that the ACAA was amended on 5th April 2000 to apply to foreign carriers. However, the amendment states that the prohibition against discrimination on the basis of disability to foreign air carriers is "subject to section 40105(b)". That section requires DOT to "act consistently with obligations of the United States Government under an international agreement" and to "consider applicable laws and requirements of a foreign country". DOT's proposed regulations fail to meet the conditions set out in the ACAA because the regulations fail to "consider applicable laws and requirements of a foreign country."

10. If the US is concerned to set standards internationally in this field, the appropriate route through which to do that would be the relevant international institutions such as ICAO. Quite apart from the question of legality, unilateral action can lead only to a confusing plethora of contradictory regimes.

11. There is a fundamental difference between domestic and international air travel which must be understood and recognised. Those travelling outside their own country - whether by air or any other means - will be bound by and indeed protected by - the laws or practices of the country they are visiting. That position would not be questioned once the traveller had left the aircraft, so there can, in our judgement, be no grounds on which a different view can be taken during the journey by air with a non US carrier.

12. Given that the only possible basis for the US to believe that their law should apply in these circumstances must be the protection of the rights of US citizens, it is particularly inappropriate that the requirements should be extended to charter flights starting and finishing in the UK.

13. Even leaving aside these fundamental legal objections, there are a number of specific issues to which we could not agree. These concern differences in law and/or practice between the UK (and Europe) and the USA. It should be emphasised that the difference in practice does not imply that one or other is superior. UK - and European - established practice in this area has been developed in close consultation with organisations and individuals representing the interests of disabled people and is generally endorsed by those organisations.

14. We believe that the most appropriate way to ensure that the quality of facilities and services provided to disabled passengers, whatever their nationality or the origin or destination of their flight, is maintained would be to accept and recognise the equivalent provision or practice in the country in which the airline is registered.

15. We also believe that there is a fundamental inequity in the proposals in that US airlines receive Federal funds to support their operation. State aid of any kind is illegal under European law save in certain specified
circumstances and any costs arising from this legislation would probably have to be borne by the airlines themselves.

16. Furthermore, we understand that DoT and the Federal Treasury have recently reached an agreement that would allow US airlines incurring fines under ACAA provisions to offset the cost (i.e. evade the fine) if they can demonstrate that they have introduced programmes that go beyond the minimum provisions of ACAA in terms of access for disabled people. This re-inforces the issue of inequity outlined above.

Specific

17. The examples given below are not exhaustive. Responses from the airlines and other industry bodies will provide more detail. However, these are illustrative of the range of issues which the proposals present.

Differences in Law

18. One key issue on which there is no question of the UK being able to accept the terms of the ACAA concerns the carriage of service animals. Under UK quarantine laws, only dogs which have been certified under the UK Pets Passport Scheme are able to make international flights and under directions from the UK Civil Aviation Authority only "assistance" dogs (as they are termed in the UK) from a recognised training school are accepted for travel in the cabin. Under instruction from the UK Civil Aviation Authority "assistance dogs" have been defined to cover guide dogs (seeing eye dogs), hearing dogs which assist deaf people, and dogs from three organisations which provide general support to disabled people.

19. Quite apart from this quarantine restriction, without proof of the level of training that the dog has undergone, the carrier has no guarantee of the animal's ability to exercise bladder control for the duration of a long haul flight or to behave in other ways that are acceptable both for passenger comfort and airline safety.

Differences in Practice

20. A key difference is the issue of advance notice. UK and European practice is to encourage disabled passengers to notify the airline at the time of their booking what their requirements are. This enables the airline to make the appropriate arrangements and to ensure that the passenger is treated with dignity and that his needs are met. We note that under US law advance notice is barred and we consider this to be detrimental both to the passenger and the carrier.

21. Under the proposed European legal framework set out in paragraph 5 above, which would oblige airports to guarantee assistance only where
the passenger has given advance notice, there is likely to be a conflict in law once the European requirements are enacted.

22. Requirements for **personal care assistants and safety assistants** are also handled differently in the UK and Europe. We support the principle of self determination; in other words that the airline should accept the word of the disabled person that he or she is able to be self reliant during the flight for feeding, medication, communication and use of the toilet. However, if the airline has reason to believe that the disabled person is not self reliant they are able to require that a companion travel with the disabled person and they are encouraged - but not required - to offer a discounted fare to that companion. We believe that it is necessary for airlines to retain this right in order to ensure compliance with health and safety legislation.

23. Under European operational rules (JAR OPS) which are then incorporated in airline operational manuals there is a limit set - for each type of aircraft - on the number of passengers with limited mobility who can be accommodated. This is for safety reasons in the event of emergency evacuation. Because of the existence of these rules which are enforced in the UK by the Civil Aviation Authority, the concept of a safety assistant does not exist in European practice.

24. The ACAA requirements on the design of **on board wheelchairs** are another instance in which there is an equivalent specification used in the UK. It is both unnecessary and unreasonable to expect airlines to change the design of the chairs which are widely accepted in use.

25. The requirements for **lifting armrests** suggest a lack of awareness of the type of seating now widely used in Business and First Class travel in UK long haul airlines. While there are equivalent standards for the provision of lifting armrests in economy class seats where leg room is limited, those in Business and First class have ample space for a wheelchair user to be able to make a level transfer without the need for an armrest that lifts. Indeed lifting armrests are technically impractical in many cases because of the location of audio visual and other equipment in the armrest. In this case we consider that a performance requirement which allowed for a range of solutions but met the common goal of level transfer would be a more pragmatic way forward.

26. The maximum permitted **check in requirement** for a disabled passenger of 60 minutes before take off is completely impracticable. Security requirements for all passengers on long haul flights, including those with disabilities, significantly exceed 60 minutes.

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1 Due to be succeeded by EUR OPS
Summary

27. This paper has indicated that, while we share the common goal of civil rights for disabled people in air travel as in all other areas of life, we believe that the proposals set out in the Notice of Proposed Rule Making are:

- **Illegal** on grounds of extra-territoriality;
- **Unnecessary** on grounds of equivalent (though not identical) provisions already in existence in the UK and Europe;
- **Inequitable** on grounds of fiscal support arrangements not available under European law;
- **Inappropriate** on grounds of established best practice and, in some cases of cost.

28. The UK Government would be pleased to work with the US DOT to establish a practical basis for agreeing equivalence of provision that would meet the needs of disabled Americans along with disabled citizens of the UK and other countries in Europe.

Department for Transport, UK
February 2005