

Introduction

The British Microlight Aircraft Association (BMAA) represents 3800 members who fly over 2000 microlight aircraft within UK airspace. Microlights are EASA Annex 2 aircraft and are flown under National regulations for pilot licensing and airworthiness. This response addresses those areas of the Consultation that might directly affect the operation of microlight aircraft by BMAA members.

Overview

The BMAA welcomes and supports the recent change in the Civil Aviation Authority's (CAA) approach to regulation which recognises that in General Aviation (GA) participants are able to make a reasonable judgement of risk and are often willing to accept higher levels of risk within their activity that may not be acceptable to other air users or surface based third parties.

The BMAA supports the CAA in its proposed review of the Air Navigation Order (ANO) to question the need for, and validity of, current regulations.

The BMAA supports the CAA in its proposals to unregulate, deregulate or delegate responsibility where possible with the aim of reducing the regulatory burden imposed upon all sectors of aviation, particularly UK GA and specifically UK Sport and Recreational Aviation (S&RA).

The BMAA agrees that the interests of third parties not connected with an aviation activity should have the highest protection priority, closely followed by Commercial Air Transport (CAT) air users who inevitably will assume there is no, or very little, risk imposed upon them by other less regulated users.

The BMAA agrees with the principle of "informed consent" whereby the individual accepts that there is a higher level of potential risk to a participant than an unconnected third party or CAT air user when undertaking an aviation activity, but cautions that there must be an enforceable requirement placed upon the risk controller, e.g. the pilot, the club or the organisation directly responsible for the air activity, to ensure that individuals have been properly informed of the risk. In answer to Question 6 it will be up to the CAA how they determine whether in any particular case the responsibility for informing participants has been adequately carried out. Guidance to the CAA's expected standards should be made available if they choose to intervene in this way.

The Consultation document

The document is poorly written. It has several areas of repetition and does not follow a logical sequence. The structure of the document makes it difficult to read and easily understand. This might have a negative effect on the response rate and the completeness of responses.

The document includes various spurious words which seem to have been left in error following drafting changes. For example on Page 9 "However, we envision allowing participants to engage in activities which involve in higher levels of risk to themselves" and on page 11 "The CAA will to be open to delegating to multiple". There are others within the document. This makes parts of the document difficult to understand.

Some of the questions are difficult to answer because they are not well written or ask for comment on a part of the document that has not yet been considered. For example Question 1 asks for a

judgement on the effectiveness of the framework although the framework itself is not described until later in the document, as an Annex. This makes the first question impossible to answer at this stage.

Question 2 should be phrased as two separate questions as there are two significant points to be answered. Firstly is the CAA's use of the EASA criteria acceptable for assessing risk to third parties? Secondly does the respondent agree that participants should be allowed to accept different levels of risk to third parties? The two points are quite separate and the poorly worded question leads to confusion.

Question 5 largely asks the same question as part of Question 2 suggests.

Response to the Consultation

The Framework

The structure of the proposed Policy Framework at Annex A leads the user through a series of considerations and options to reach a conclusion that will either accept a proposal together with an implementation plan or reject the proposal.

The scope of the questions/stages within the framework appears comprehensive without any immediately obvious areas of omission.

The framework document is not difficult to follow. We assume that all regulatory decisions are currently made following a similar logical thought process.

The references to consultation at various stages of the framework appear to be appropriate although as with all proposals continuing contact between the proposer and the decision maker throughout the process is important. The proposer must be involved in the final stage of the framework when the completed proposal is presented to the SARG Leadership Team for consideration.

Question 7 asks if certain areas of regulation should be left out of the scope of the framework. This in turn asks the question "If the suggested areas are out of the scope of the framework what other system of assessment and consideration will the CAA use when addressing the validity of regulation applying to those areas?" If there is another system or framework why is that more applicable to those regulations than the one proposed within this consultation?

The consultation says that the framework will be used by other departments within the CAA outside the GA Unit when making regulatory decisions regarding GA and puts the responsibility for ensuring that the framework has been used on the GA Unit. We disagree that it is the role of the GA Unit to ensure that those other departments are following the framework. The other departments should be held individually responsible for using the framework and be able to demonstrate to the Group Director that they have done so. This will ensure a uniformity of approach to regulation throughout the CAA Safety and Airspace Regulation Group (SARG).

The CAA should avoid a fragmented approach to regulation. The consultation suggests that the GA Unit may have a different approach to regulation than other departments within the CAA, when in reality the Principles of Better Regulation should apply throughout and logical processes should be followed when considering creating or changing any regulations.

Risk consideration

The consultation clearly indicates the CAA's intention to take into account the personal risk appetite of affected parties when considering creating or changing regulations. We support this approach.

The consultation discussion that puts regulatory protection for uninvolved third parties and other airspace users ahead of the needs of informed participants is supported.

It will be difficult in some cases to make accurate risk assessments; this is reflected within the consultation document. The plan to assess on a "macro-level" by comparison to other countries is a starting point which will require an open mind approach not always previously demonstrated by CAA regulators. The CAA has a reputation for not routinely taking into account the track record of foreign operations, notably in airworthiness regulation, and insisting that standards that have been considered as successful abroad are subjected to complete UK scrutiny as if they have no track record. An approach that accepts other States standards will need to be fostered within CAA.

We cannot comment on the suitability of the use of the ICAO/EASA risk assessment tables. We suggest that the CAA develop a policy of "acceptable losses" for the various groups of at-risk parties. The acceptable loss for primary participants might be quite high; the acceptable loss for third parties would be much lower. The consultation cites two fatal accidents between 2003 and 2012. In both of these accidents the people that were killed could be considered as being complicit in the event, certainly not completely detached from the operation of the aircraft.

Commercial considerations

We agree that regulation that could be withdrawn or amended without a significant safety concern should not be maintained solely to protect existing commercial interests. However the CAA must recognise that many businesses and support associations walk a fine line between financial security that allows them to service their customer/membership base and financial insecurity that would cause them to fail. Failure of these entities could have a significant effect on the viability of a particular sector.

When looking to delegate responsibilities the CAA must ensure that there is a viable business case for the organisation that will be expected to take on the delegated authority or otherwise CAA should continue to offer an option for the oversight of the regulation if there is no appetite for industry to take on that delegated role.

It is likely that reduced regulation and possibly a reduced cost of oversight if delegated will lead to a growth in GA, particularly in the S&RA sector. If this is the case the decision whether to reduce regulation, or delegate oversight, can be positively influenced by the potential improvements in commercial activity.

Reduced regulation that reduces costs may also lead to increase in flying activity which, as well as creating specific activity based revenue, could help to maintain or improve pilot skill levels. This has the potential to have a positive effect on flight safety.

Conclusion

We support the approach to regulation that considers the risk appetite of the identified airspace user groups and third parties.

We agree that the use of a published sequence through which a regulation proposal is to be progressed will help to create a uniformity of approach.

We hope that the CAA will continue to engage with its GA Partners to ensure that regulations are proportionate and made with a full understanding of the effects on the GA sector.

Response submitted on behalf of the BMAA by Geoff Weighell, CEO. BMAA