

GA Alliance Response to CAP 1188 – 31st July 2014

The GA Alliance (GAA) is a group of organisations representing, as far as possible, UK General Aviation (GA) and particularly Sports and Recreational Aviation (SRA) interests. The Alliance coordinates some 72,000 subscription-paying members of these bodies. These members represent the owners/operators of around 60% of the UK registered aircraft fleet, rising to over 70% when unregulated aircraft are included. Activities cover parachuting, hang gliding, gliding, ballooning, plus sport and recreational flying in light and microlight aircraft and in helicopters. The objective of the GA Alliance is to co-operate and engage with government departments and other relevant organisations on regulatory and directly-related matters, to support and progress the activities of SRA. This response has been agreed by the member bodies of the GA Alliance. Individual associations may also submit responses to deal with issues specific to their operation.

Introduction

The GA Alliance thanks the CAA and strongly welcomes the publicly stated aspirations towards GA that the CAA and the Government have made. To the GAA these represent a promising start to the programme of reform for GA and we look forward to working with the CAA on a variety of GA issues in the future.

The GAA also welcomes the publication of the draft framework and notes that it raises a number of further discussion points on which it looks forward to engaging with the CAA. It is a complex and wide ranging publication and with regard to some individual aspects of it, such as the question of data, individual consultation and discussion with the GAA's member Associations, will likely be appropriate.

General Principles of Regulating GA

Before engaging with the detail of CAP 1188 the GAA would like to set out a few general principles by which it believes that the CAA, the GAA's member associations and stakeholders should approach the issue of GA regulation.

- Safety in GA is fundamentally founded on individual competence rather than regulatory integrity. Regulation should not therefore be seen as a source of safety but as something that is sometimes required to ensure a minimum standard and the protection of third parties.
- Regulatory decision making should be based on overall risk, not necessarily prompted by individual incidents.
- When a specific risk is identified and mitigation is believed to be necessary the introduction of formal regulation should be deemed a last resort and only after other non-regulatory means have been fully explored.
- Where formal regulation currently exists it should be scrutinised to ensure that it is indeed necessary and that the mitigation it is targeted at could not be achieved by other means.
- In the process of the removal of formal regulation the impact should be assessed and in some cases where stakeholders may derive value from regulation it would be beneficial to manage the removal so that negative consequences for stakeholders do not occur.

- In the wake of the CAA's new approach to regulating GA stakeholders should respond with a new culture of responsibility and accountability that recognises that the CAA is primarily concerned with the protection of third parties.

CAA statutory duties and future management of GA risks

Question 1: Do you agree that the framework will enable the CAA to balance effectively its statutory duties and protection of third parties with its new approach to GA regulation?

The GAA sees nothing significant in the proposed framework that is likely to preclude that balance. However, there are a number of more detailed questions and comments that the GAA has and they will be expanded on while answering the subsequent questions.

It is hard to determine whether that balance would be suitably struck without having seen how the document might be used in practice on a number of GA related issues; although the example proposal in Annex B involving the deregulation of single seat microlights appears to be a reasonable process to follow.

Fundamentally and critically in order for that appropriate balance to always be struck it will be necessary for **all** areas of the CAA that have any decision-making powers relating to GA to be held accountable for the principles of the framework, not just the GA unit, and be seen to be held accountable should the industry call on them to justify their decision-making.

CAA's Statutory Duties

The CAA's statutory duties give the organisation considerable discretion to exercise them as it sees fit; therefore when considering the CAA's intent to concentrate primarily on 'third parties' it would be logical to closely define the different classes of stakeholders that are potentially impacted by GA. Then define which of those are to be considered 'third party' and what degree of mitigation each class requires in accordance with the statutory duties and the degree to which the stakeholder can assess and control risk.

For example such classes may include:

- Uninvolved third parties on the ground
- Involved third parties such as air show spectators
- Commercial air transport and associated passengers
- Paying passengers on GA aircraft (potentially under the SSA&C process)
- Participants or crews conducting aerial work
- Non-paying passengers on private flights
- Private pilots

The CAA should clearly state who it considers to be a third party and develop a 'risk hierarchy' for mitigation purposes.

Question 2: Do you agree that the EASA criteria for acceptability of levels of risk are appropriate for the CAA's own assessment of risks to third parties, but that higher levels of risk to the participants themselves should be allowable?

Yes the GAA agrees that higher risk levels should be allowed to the participants of GA than to uninvolved third parties; it is well established that the risk to third parties on the ground from GA is vanishingly small.

In terms of the acceptability of risk calculation the GAA members believe this is an area in need of clarification and refinement. The table of "Probability of occurrence vs. severity of occurrence" is a useful and oft-used concept in risk assessment but it is too generic in this context. Similarly the table from ICAO's Safety Management Manual, by which probability and severity are measured, appears out of place; it is primarily a table to assess the likelihood of a system or system-human interface failure onboard a passenger carrying aircraft and to what extent that failure would endanger the aircraft and its occupants. It was not designed to address the issue of risk differentiation between various classes of risk bearers.

A more appropriate approach in this context would be to adopt target rates for differing classes depending on the level of risk that it is deemed appropriate which could be developed as outlined in the response to **question 1**.

For example this might be:

- Uninvolved third parties: 10^{-7} fatalities per GA flight hour (1 death per 10 years, assuming 1 million GA hours flown per year)
- Passengers on GA aircraft: 5×10^{-6} fatalities per GA flight hour (5 deaths per year)

What do the GA public commitments mean?

The GAA welcomed the CAA Board's response to the RTC (Red Tape Challenge) and welcomes the further iteration of that response here. The aspiration to 'only regulate directly when necessary and to do so proportionately' deserves broad support throughout the GA community.

Deregulate where we can

The GAA supports the principle to 'deregulate where the CAA can' but would caution that in reality a case by case analysis would be appropriate with the implications of a deregulation being fully understood prior to being enacted.

The GAA is also supportive of representative organisations taking more of an interest in self-regulation with the emphasis on the sharing of safety information that the document alludes to. However the general statement that '**commercial interests of stakeholders cannot be a valid basis for safety regulation**' can be open to question; regulatory decisions almost always have an economic dimension and it is customary for the CAA to conduct regulatory impact assessments prior to a change in regulation. While the quality of these assessments has sometimes been variable the principle that they are conducted has been firmly established and should remain in the consideration process.

Normally they would be conducted prior to the introduction of a regulation – logically there is no reason why that should not be conducted in the reverse direction. Should a deregulation prove not to be in accordance with the CAA general aspiration to 'help create a vibrant and dynamic UK GA sector' the GAA would not support its pursuit.

As outlined in the general principles at the start there may be cases, especially in the area of airworthiness, where some stakeholders derive value from the presence of regulation. In these instances a partnership approach to deregulation between the CAA and stakeholder organisations would be very much welcomed to manage the transition so that those stakeholders who for example wished to continue to access expertise of a commonly accepted standard relating to airworthiness could do so. However in many cases the GAA would welcome the challenge of providing more support to members operating in the deregulated environment.

Delegate where appropriate

The GAA is also very supportive of the general aspiration to 'delegate where appropriate' and to test appetite for delegation with industry and stakeholders. It may be that GAA member associations can take on further delegations from the CAA and we would welcome the challenge in doing so.

With regard to the use of Qualified Entity status the GAA is concerned that the criteria to be a QE in Annex V of the Basic Regulation are too restrictive in terms of the relationship the QE is allowed to have with the area of involvement. Revising the criteria would remove a significant block to delegation for areas of GA that fall under the CAA's EASA related responsibilities; we strongly urge the CAA to address this issue in responding to the Basic Regulation NPA and would welcome further engagement on defining a more appropriate set of criteria.

A further complication in the Sports and Recreational area is where "appropriate organisations" are member associations operating on a not-for-profit basis. A strength of those associations is often the influence they have on their members; there is no obligation for pilots or operators to join a GA association and neither the CAA nor government can mandate membership of an association as a condition of being within an association's safety management system. There are economic and operational implications of this position. Clarity of methodology and approach here could be the key to success and needs to be ensured at the outset.

No 'gold plating'

The GAA very much supports the statement of intent on this issue.

Considering that the vast majority of European legislation that relates to aviation is derived from Regulation rather than Directive, the use of the European Commission definition, “**exceeding the requirements of EU legislation when transposing Directives into national law**” would not be entirely appropriate in this context.

The following would be a more suitable statement since it reflects the reality that while EU Regulations do not require transposition into national law it falls to the CAA as the UK's relevant competent authority to apply them:

“Exceeding the requirements of EU legislation when implementing Regulations at national level”

Help create a vibrant and dynamic UK GA sector

The GAA believes clarity is needed here. It understands that the CAA's statutory duties preclude promotion of the sector but would argue that the promotion of a vibrant and dynamic sector will also promote safety in the sector.

Question 3: Do you agree that the CAA's proposed GA Policy Framework poses the right questions for the CAA to ask itself when considering how it might regulate different aspects of GA activity?

Question 4: Are there any additional questions you would add and why? Where would you put them in the decision making process?

The GAA has a few comments on the proposed structure of the framework but as a process to guide a proposal the framework proposes sensible and relevant questions to lead to a conclusion.

The GAA would like the framework to allow greater scope for stakeholder involvement at an early stage of proposal development so that expectations on what is to be achieved and likely outcomes are more aligned. This would not preclude the CAA from using the traditional consultation process it uses for proposals for public comment but the identification of key expert stakeholders for proposal development at an early stage would be beneficial and would have the added benefit of reducing the workload of the GA unit. It might also enable early identification of proposals which would not pass later litmus tests, thereby saving resources in pursuit of nugatory efforts.

As stated in the response to **question 1** it would be logical to develop a more extensive 'risk hierarchy' and integrate that into the framework process. Additionally if the CAA are to use a hazard/probability and risk level concept it would be appropriate for the CAA to develop acceptable levels of risk for each of the different classes of stakeholder. For example currently the framework does not test for increased risk to non-paying passengers on board private flights so the CAA should consider what statutory duty it has towards them and what level of risk to them is tolerable.

With a mind to the issue of data collection the CAA could also attempt to have a test within the framework which asked what the value of current regulation was in terms of lives saved and whether the amount of resource expended on a particular area currently contributed to the safety of third parties.

Similarly if there is not sufficient evidence to ascertain whether a proposal is acceptable in terms of third party risk yet there is ***no evidence to suggest that it would be unacceptable*** what would be the appropriate regulatory decision, should the framework attempt to answer that question?

Questions 3.1, 3.2 & 3.3 Deregulation, Delegation or Regulation make more sense in the context of 'issues' or sectors of the GA industry rather than specific proposals. For example in the case of SDR microlights the proposal was already framed as a deregulation so the question seems moot in this context. If the framework were to be used to answer questions such as 'how in the future are we to deal with airworthiness of private aircraft?' 3.1 should come at the start of the process. The CAA should consider what the most appropriate way to frame proposals or issues from the outset and subsequently it may be appropriate to change the order of the framework questions in some cases.

There may be instances where it would be appropriate, as it is already being done with Permit to Fly under IFR, for a period to trial a proposal and gather evidence of its safety. This could be integrated into the framework by means of an appropriate question.

Questions 5.1 and 5.2 Gold Plating Check appears to be somewhat inconsistent with the aim of eliminating 'gold plating'; 5.1 effectively asks whether the proposal would impose a *higher* standard than EASA and 5.2 asks whether it would be possible to gain an exemption under Article 14 of the Basic Regulation if that were the case.

It is difficult to envisage a situation in which the GAA would support the adoption of a *higher* standard than EASA so a more logical response if the answer to 5.1 was *yes* would be to simply adopt the EASA standard rather than potentially continue with a higher one.

Questions 6.1 and 6.2 Consistency Check – the intention here is clear and the GAA fully supports that. It would be appropriate though to broaden the 'consistency check' to include a general check against the aims and objectives of the GA reform programme and in addition to considering EASA standards include a check against the regulation of annex II and non-EASA activities elsewhere in Europe and the treatment of different activities in other major aviation states around the world.

In terms of engagement with EASA while the GAA is confident that CAA influence at EASA will continue to expand and improve it is important that suitable 'in-roads' to EASA continue to be developed so that UK proposals are successful in the relevant processes in Europe. Proposals that involve legislative change at EASA should be given high level endorsement to increase the likelihood of success.

The GAA would like to add a statement with regard to EU regulation insofar as when an EU regulation or the implementation of a regulation is unclear while the CAA should consult and discuss with EASA and other EASA states it should ultimately take the option that is most straightforward from the point of view of UK stakeholders and be prepared to justify itself to the Agency should the CAA be challenged at a later date.

In addition to the outlined framework process, a post implementation review, involving the CAA and stakeholders should take place so that understanding of outcome is shared and any relevant lessons that could refine the process in the future are absorbed.

Above all the presence of the framework is very welcome, it is now important that it is used and developed into a live document, that stakeholders and their representative associations observe its use and that understanding of the decision making process is shared.

Safety Standards Acknowledgement and Consent

The GAA is largely composed of organisations that are not currently involved in ‘for profit’ flying. Nonetheless we are broadly supportive of the concept that people should be able to attest to their understanding of the risk when boarding an aircraft in certain commercial circumstances. It is also important to note the distinction between a ‘not for profit’ organisation such as a club accepting payment for a flight and an organisation that is operating on a purely commercial basis. Would the SSAC process make any distinction between those scenarios?

On a point of editorial consistency it is not entirely clear why the paragraph that refers to the GA Challenge Panel recommendations that pertain to the CAA are included here. While the Panel did make some recommendations in the area of ‘informed consent’ it is unclear whether this paragraph is making reference to the Panel’s recommendations in general or simply to those specific to this area.

Question 5: Do you agree that it is appropriate for individuals to be permitted to engage in aviation activities which involve increased risk of death or bodily injury to themselves, provided that they willingly assume the risks involved and provided that third parties are safeguarded from their conduct?

Yes. Willing participants should retain the freedom to expose themselves to risk providing third parties are unaffected. It has already been established that the risk to uninvolved third parties from light aircraft is very low and provided that suitable information about the risks to paying participants is provided there is no reason why they should not be allowed to partake – as indeed is permitted in many other adventurous and leisure activities.

Question 6: Do you agree that the information disclosed regarding risk associated with an activity should be that which a reasonable member of the public would expect to know prior to participating; and do you agree that a CAA employed qualified lawyer should make this determination?

The GAA would like to understand what the associated insurance and liability issues might be and therefore would additionally seek independent legal advice on a scenario specific basis to form a view. Clarity on exactly who within the CAA would be involved in the decision to allow such a commercial operation would also be welcome.

What is out of scope of this framework?

Question 7: Do you agree with what is proposed to be out of scope of the framework?

The presentation of the subject of scope appears to be somewhat confused in the document. On page 13 it states: ***This framework is designed to cover all GA matters: airworthiness, operations and associated personnel training and licensing for non-commercial operation of ‘other-than complex’ aircraft.*** However the framework is clearly also attempting to deal with ‘for profit’ operations as well and that presumably takes it beyond the ‘non-commercial’ remit that on page 13 appears aligned with that the GA Unit has been assigned.

Then on page 15 it implies that issues such as licensing and airspace regulation *may* be out of scope but the wording of **question 7** implies that the document is proposing what *should* be out of scope. Clarification on this would be welcome. If left in the current state there is a danger that other areas of the CAA may use the issue of scope and the existence of so called ‘irreducible regulation’ as the document alludes to, as an ‘escape’ from the principles of the CAA’s GA policy framework.

The GAA view of scope is fundamentally that nothing should be considered entirely out of scope – if the framework is robust enough to ascertain where third party risk is unacceptable there should be no need for the framework to have a ‘scope’ at all.

Particularly with regard to airspace the GAA remains concerned that the needs of GA are not being taken into account and that the mechanism by which recreational flying makes its interests known on this subject is not sufficiently robust. In the area of airspace it should not be assumed that GA users of airspace automatically desire lower levels of protection and in pursuing the protection of commercial air transport it is important that negative safety impacts on users of uncontrolled airspace do not occur.

What evidence will be used to assess risk?

The GAA welcomes the CAA’s intention in the area of evidence and feels that the distinction between ‘macro’ and ‘micro’ level evidence is a useful one. It is important though that these exercises of comparison are conducted thoroughly with learning from other areas of the world being an embedded concept within the CAA’s consideration of all aspects of regulation and not simply approached whenever it appears appropriate. On the basis of the comparisons here, while they are useful, it would appear that the practice of such international comparison is still in its infancy and should be further embedded within the GA Unit and the CAA’s Intelligence, Strategy and Policy.

With regard to the micro level analysis and in particular the statement *‘it will be the responsibility of those using the framework to gather evidence on the micro-level in order to carry out the required risk assessments’* the concern would be that this could place too much emphasis on the proponent and that a lack of evidence that tended towards an appropriate way forward for the CAA on the issue may be used to block reform or removal of a regulation. It may be that as part of the framework there should be a test which involves the presentation of arguments and evidence that something is **not** safe and that in the absence of that evidence the proposal be allowed to proceed.

Question 8: Do you have any suggestions as to how the CAA can continue to collect proportionate and accurate data from the GA community without applying excessive burdens on the sector?

The GAA’s initial reaction to this question is that the question of data is a very broad and potentially complex one; probably requiring a partnership exercise between the sector and the CAA to establish some proportionate mechanisms to collect meaningful data – if it was considered mutually agreeable to do so. A ‘data framework’ would be useful but would take some considered discussion to develop. The GAA would welcome further dialogue with the CAA on this since developing data collection and the associated analytical capability should be one of the key components of the GA reform programme.

The reference to ‘performance based regulation’ in the introduction of the document was noted with interest, if the CAA wish to have a PBR concept that includes GA it may be that in the context of that development a discussion could be had about what would be helpful to collect and the associated methodology. A dedicated work stream for the processing of currently available data to better inform risk and safety related decisions would be strongly welcomed by the GAA.

Regulating other pastimes

The GAA does not have a detailed comment on this other than it welcomes the CAA considering approaches to the regulation of other recreational pastimes. It would be of interest to see if these comparisons warranted further investigation and also whether practice from other regulators in other recreational industries could be learnt from.

The CAA should also share understanding with other regulators who have similar statutory duties towards third parties about appropriate levels of risk exposure.

Who in the CAA will use the framework?

Question 9: Do you agree with how we propose to consult on conclusions reached before final decisions are taken?

As described in the answers to **questions 3 and 4** the GAA would like to see greater scope for involvement of key stakeholders in the development of proposals and discussion about their viability. For example discussion between the CAA and key stakeholder experts, under Chatham House Rules if deemed appropriate, may be key developing proposals successfully. Where a particular proposal needs to be tested or trialed, for example IFR on a permit to fly, involvement of the relevant representative associations in establishing the viability of a proposal would also be important.

This would not preclude the use of the standard manner in which the CAA publically consults but the effectiveness of simply presenting a written consultation document and collecting written responses is sometimes limited in terms of the value of the engagement so consultation must be more substantive in many cases.

Question 10: Do you believe that the governance mechanisms we propose to put in place will ensure the GA Policy Framework is applied appropriately with the CAA's statutory duties?

Use of the framework **throughout** the CAA is very important – we do not believe it is sufficient for the head of GA to be accountable to SARG leadership for ensuring other areas of SARG apply the principles – we believe that **all** areas of SARG should be accountable at the most senior level for applying the principles, and that accountability to be transparent to GA stakeholders.

For example the framework proposes consultation with other areas of the CAA, particularly ISP. It is therefore of the **upmost importance** that **all** areas of the CAA are aligned with the principles of the CAA's reformed approach to GA and that they can be held accountable for their application of the principles of the framework and indeed their failure to do so if necessary both to the GA unit and to relevant stakeholders.

The 'Better Regulation gateway framework' appears to be an excellent 'gateway' process for all proposals to be submitted through however the precise relationship between the that and the framework itself is not made completely clear.

Question 11: Any other comments?

The GAA remains very positive about the proposed framework and looks forward to seeing more proposals in the GA programme being submitted to the process.

One issue that the framework does not fully address is that of 'regulation versus oversight' mechanisms. Very often in GA it is not the regulations, as such, that are the 'issue' but the manner in which the oversight that ensures that regulation is complied with is conducted. A delegation for

example may not involve any regulatory change but may simply involve the same regulations and oversight mechanisms being used by a different organisation to the CAA; alternatively they it may involve a different organisation using different mechanisms to administer the same regulation.

How oversight mechanisms are used and what they cost are very important considerations; especially in the context of the 'Performance Based Regulation' concept the CAA should carefully consider its oversight mechanisms for proportionality on GA stakeholders.

Engaging with EASA and other Member States

The GAA recognises that significant progress has been made in the European arena on regulatory issues surrounding GA. It is important that the principles of regulating GA that are currently under development in the UK are exported to EASA and other member states to the greatest degree possible. We must convince other member states that uninformed third party risk and users of commercial air transport should be the primary target of regulatory attention.

In terms of EASA and the framework; where EASA regulations are not considered consistent with the principles of the framework engagement with EASA should be commenced to influence the organisation and other member states towards a position that is. The CAA should continue, with Department for Transport support, to influence EASA at the highest level and export the principles of 'Better Regulation' for GA.

What does success look like?

Slightly aside from the comment on the framework proposal the GAA would like to take this opportunity to raise the issue of 'what does success look like?' and the potential to work with the CAA in establishing a common understanding of the what the 'high level' outputs of the GA reform programme will look like in due course.

It is important that a common understanding of success is established so that the CAA can be held to account if necessary and also so that the GAA associations are seen to play their part in the reform process too.