

Department for **Transport**

Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation

Summary Note for General Aviation Stakeholders¹

On 10 December 2009, the Government published its consultation on proposals to modernise the UK civil aviation regulatory framework. The consultation covers a broad range of issues, some of which may be relevant to General Aviation interests.

We are aware that consultations can be burdensome for small or medium sized organisations with limited resource. Therefore, to help alleviate this and in response to a request from General Aviation stakeholders, this note provides a brief overview of key proposals. The intention is to assist representative organisations and other interested parties in understanding the scope of the consultation and identifying how it might affect them so that we can ensure proportionate implementation of our proposals.

There may be other aspects of the consultation relevant to specific interest groups not covered by this note. For a more detailed explanation of our proposals, you should refer to the consultation document. A copy of the consultation can be found on the Department for Transport website at:

<http://www.dft.gov.uk/pgr/aviation/regulatoryreform/>

Chapter references have been provided throughout this note to help you navigate the consultation document.

In accordance with Government best practice guidance on consultation, we encourage consultees to provide evidence where possible to back up their arguments and to focus their responses on the questions asked in the Consultation Document, as this is where there is scope to influence policy.

The deadline for responding to the consultation is 11 March 2010.

Background

The Consultation Document explains that since it was established in 1972, the CAA has maintained its reputation as a world class regulator and adapted as far as possible to reflect changes in the aviation sector. But it has to work within a legislative framework which is now almost three decades old, in the face of a rapidly evolving industry and a world facing increasing economic, environmental and social challenges. The need to address this is compelling. We are therefore proposing to modernise the CAA's regulatory framework to

¹ For this note, General Aviation is considered to mean any civil aircraft operation other than a commercial air transport flight operating to a schedule.

enable the CAA to carry out its regulatory activities in a manner that is fully consistent with protecting the public interest in aviation.

Giving the CAA a clear statutory focus for the 21st Century

We are proposing to give the CAA new general objectives which will shift the focus of the CAA's regulatory activities from the industry to the user of air transport and the general public (see proposed objectives below). These objectives will replace the CAA's current statutory remit which is set out in section 4 of the Civil Aviation Act 1982. They follow on from recommendations made by Sir Joseph Pilling in his independent Strategic Review of the CAA² and the CAA's Strategic Review of General Aviation.³

"I believe that giving the CAA a general role to promote aviation would be incompatible with its duties as a regulator. The CAA is responsible for safeguarding the general public interest, which is broader than the aviation community."

Sir Joseph Pilling

The proposed objectives would set the future strategic direction for the CAA. The CAA is an independent regulator and so must use its own judgement to decide how to implement the objectives set for it by Parliament, subject to the CAA's overriding duty to act in a reasonable and proportionate way. Therefore the consequences of giving the CAA new objectives will, for General Aviation, depend largely on how the CAA applies them when carrying out its regulatory functions. However, we want to use this consultation to ensure that we have identified the right strategic priorities and to gather information on the consequences of implementing them through legislation.

Chapter 4 of the Consultation document provides more detail on this. In particular, we want to understand if there are any other public interest considerations that should be addressed in the CAA's objectives, including any UK economic issues not otherwise covered (see questions 4.1 and 4.2).

Consumer objective

Under the existing legislative framework, the CAA can take account of and promote consumer interests across most of its activities. However, it has to do this in a way that reflects its duties to the air transport industry as well. At times these duties can be conflicting, or serve to cancel each other out. For example, an intervention using the CAA's consumer protection powers might be in the interests of passengers, but not in the interests of other organisations such as airlines. This limits the extent to which the CAA can use its powers to protect consumer interests.

² Sir Joseph Pilling, *Report of the Strategic Review of the CAA*, 2008

³ CAA, *Strategic Review of General Aviation in the United Kingdom*, July 2006

By giving the CAA an objective which would require it **to pursue the reasonable interests of consumers**, we want to make clear that the CAA's responsibility is to the end user as we think this most accurately reflects the wider public interest in aviation. Passengers on commercial services make up the majority of end users and we think they are the individuals that have most need of the regulator's protection. However, air freight customers and those individuals who use general aviation services are also **consumers of some of the services the CAA regulates** and have interests which should not be overlooked. In these cases it is our intention that the CAA should be able to take all these non-commercial air passenger views into account and should not be prevented from taking action, provided this was a proportionate use of its resources and did not create any significant detriment for end users collectively.

Chapter 5 gives further detail on this, as well as information on other proposed guiding principles and the funding consequences of our proposals, which we expect to be modest. In particular, the consultation invites people to comment on whether we have identified the right focus for the consumer objective, including who we mean by the end user (see question 5.1).

Safety objective

As now, the CAA would be required **to secure a high standard of safety within civil aviation** and we would ensure that the CAA would put safety first where in its judgement it would be appropriate to do so, working within the constraints of international safety rules, including those for General Aviation. This is set out in more detail in **Chapter 6** of the Consultation Document.

Environment objective

Currently the CAA has a number of *specific* environmental responsibilities which derive from international standards, European legislation and domestic legislation. For example, in carrying out its air navigation functions under the provisions of Transport Act 2000, the CAA must take account of the environmental guidance provided to it by the Secretary of State in 2002.

However the Pilling Review recommended that there should be a *general* environmental duty for CAA in order to 'allow the CAA to actively seek out environmental improvements in existing areas of work and justify its intention to do so'. Our proposal is for the CAA's new statutory remit to include a general environment objective requiring the CAA, where possible and appropriate, **to have regard for environmental factors alongside the proposed safety and consumer objectives and seek environment improvements**. This would be supported by an obligation to take account of environmental guidance issued by the Secretary of State.

This would mean that the Government would continue to set environmental policy. The CAA, as an independent regulator, would determine how best to pursue its new environmental objective, taking account of the policy priorities set out in the Secretary of State's guidance.

The impact of our proposals would depend on how the CAA takes forward its new objective. We expect this would ensure the CAA has regard for the Government's environmental priorities and that consideration of the environment is a constant part of the CAA's thinking. It would also require the CAA to seek environmental improvements where currently this is not part of the CAA's remit.

Chapter 7 of the Consultation Document gives further detail on this, as well as information on other proposals such as on direction giving powers for the Secretary of State, funding consequences of the proposals and case studies illustrating how the CAA might respond to its new objective. The consultation does not, however, propose any additional environmental functions for the CAA.

Application of the new objectives

There are situations where the new objectives would not apply. For example for some of the CAA's regulatory functions where separate objectives apply (see **Chapter 8**) or where it is following particular international laws. As now, the CAA would also have to act in a reasonable and proportionate way, and to support this we are extending its Better Regulation duty to functions that are currently exempted (see paragraphs 4.22 - 4.27).

CAA's governance, funding and enforcement arrangements

In line with Sir Joseph Pilling's recommendations, we are proposing to make some changes to modernise the CAA's governance arrangements. Our proposals are to allow the CAA Board to appoint its own Executive Board members without ministerial involvement, and to remove the statutory requirement for HM Treasury to approve CAA Board members' pay. DfT would continue to appoint non executive directors and approve the appointment of the Chief Executive.

We are not proposing to change the way the CAA is funded, but we are proposing changes to legislation to improve the CAA's process for consulting on its charging schemes.

Finally, we propose to give the CAA access to a range of civil sanctions to enable it to undertake more frequent and better targeted enforcement, particularly in the area of consumer protection law. Alongside this, we are proposing to allow the CAA to charge those it regulates for the cost of its criminal prosecution work (currently this is funded by the tax payer). The consultation notes that this work relates mainly to the General Aviation sector and seeks views on how the CAA should recover its costs in an equitable way (see question 12.6).

More detail on these proposals is provided in **Chapters 10, 11 and 12** of the consultation document.

Other proposed reforms to the civil aviation regulatory framework

The consultation also includes proposals to:

- Give the CAA the ability to make **medical data on air crew** available for approved epidemiological research purposes (subject to the results being published in an anonymised form). This would include General Aviation pilots (see **Chapter 15**).
- Give the CAA new powers to **obtain relevant information and make arrangements for it to be made publicly available** to support the delivery of its objectives; for example, information for air passengers on service performance at the time they purchase a ticket (see **Chapter 9**).
- Reform the scope of the **Air Travel Organisers' Licensing (ATOL)** scheme to provide greater clarity for consumers about whether or not their holiday is financially protected against the insolvency of a travel company (see **Chapter 13**).
- Modernise the process for making **airport byelaws** (typically airport byelaws are used to regulate behaviour, preserve order and restrict or prohibit access to any part of the airport, and are similar to the byelaws made by Local Authorities) and increase the level of consultation with local stakeholders (see **Chapter 14**).

Further information on our proposals and how to respond to the consultation can be found on the Department for Transport website:

<http://www.dft.gov.uk/pgr/aviation/regulatoryreform/>