

**.Regulating Air Transport:**

**Consultation on Proposals to Update the Regulatory Framework for Aviation**

**Response Form**

When responding to questions, please could you:

- provide reasons for your answers with supporting evidence where available, as this will help us to refine our policy proposals; and
- comment on the analysis of costs and benefits set out in the draft Impact Assessment at Annex D of the consultation.

**Information about you**

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Company Name or Organisation  
(if applicable) **General Aviation Alliance**

Please tick one box from the list below that best describes you /your company or organisation.

Small to Medium Enterprise (up to 50 employees)

Large Company

Representative Organisation -**YES**

Trade Union

Interest Group

Local Government

Central Government

Police

Member of the public

Other (please describe):

If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:

**72,000 subscription paying members. We formed an initial working group and then reached agreement from sector representatives. Pre-finalisation of proposals initial position papers presented on our website which have been highlighted to members.**

If you would like your response or personal details to be treated confidentially please explain why:  
**We are content for our views to be known.**

**Q4.1** Do you think the three proposed general objectives (in respect to the consumer, safety and the environment) taken together cover the public interest in aviation? If you think other interests should be addressed, please set these out and explain why.

***In our view the need to redirect and expand the focus of the CAA as described is “not proven”, notably other rationalization options have not apparently been considered. Pilling noted (para 225) that the OFT and CAA were working together where the CAA are increasingly involved in current enforcement on consumer issues: such overlap should question the role of each organisation.***

***There is apparently no Better Regulation Executive (BRE) evaluation of a best national optimal solution for consumer interest ie who should oversee what and how. As a minimum, the absorption of those duties into the Office of Fair Trading (OFT) should be considered.***

***In this context we firmly believe Safety Regulation should remain with the CAA as a clearly focused activity as proven by world wide example. The option of contracting CAA to be solely a safety regulator, with other accountabilities divested elsewhere should be considered.***

***Pilling clearly agreed a role of Advocacy for airlines, coupled with a safety regulation role, should not be carried out by the same organisation. We agree, and contend the proposal to give the CAA the objective of regulating safety together with consumer protection is not compatible because of potential conflict between the two.***

***For example, a proposal for new safety equipment in commercial aircraft might be resisted on the consumer protection ground of cost (a high cost example being that all passenger seats should be rearward facing with proven safety benefit by military example); both aspects would potentially be contested by different users but need to be decided by the same regulator. We pointed out in our paper of June 2009 the general duties of the Secretary of State could be extended to include a duty to have regard to GA in the policy development and delivery and regulation management processes (see G A Alliance Initial Position Paper on DfT Consultation Document - Appendix 1 - Review of the Civil Aviation Act 1982 - Matters for Consideration, 2 - Representation).***

***We find a new advocacy for the consumer, as a user of Commercial Aviation services, to be basically at odds with the established view that advocacy for a party and safety regulation are not compatible. Similarly a safety regulator who sets standards upon which his charges are based is wrong when they have a related financial objective.***

***In respect of Environment we are not convinced by the very limited Pilling inquiry analysis. We see a direct conflict in para 1.10, with the CAA remaining independent, with 1.25 proposing the Secretary of State provides guidance.***

***We do concede that if identified as a secondary decision aspect it may be possible; we would though wish and expect to see and be consulted on the detail proposals.***

**Q4.2** Are there any economic issues not covered which you think should be reflected in the CAA's new objectives?

***In respect of Airworthiness, Licensing and possibly other areas the CAA will soon cease to be a regulator and become an agent for the European Aviation Safety Agency and is likely to be one competing with other State's agencies. The CAA will then compete on a European stage in a "regulatory shopping environment" this should have been fully reviewed in these proposals.***

***There is no analysis of the marginal additional cost of safety regulation; as well as being the best (as measured by safety performance), the CAA is the most expensive and often most restrictive of prime aviation States. This is a failing of analysis and the CAA should demonstrate optimal performance rather than merely claiming to be "the best". Economic opportunities for the Nation could be maximised if GA advocacy were placed at Cabinet level (see 4.1 above).***

**Q4.3** We think the CAA as a whole should have a duty to have regard to the principles of Better Regulation. In addition, for all its non-economic regulatory functions, we think the CAA should have a duty to have regard to the Regulators' Compliance Code. This is consistent with the Government's Better Regulation agenda and will align the CAA's regulatory practice with that of other regulators. Do you agree with these proposals?

***Yes, and they should be reviewed retrospectively where it has not been applied, with a plan to reconsider recent activity/change where it has not done so.***

**Q4.4** We propose to extend the duties under Part 4 of the Regulatory Enforcement and Sanctions Act 2008 (to review and remove any unnecessary burdens; and to produce an annual statement on this) to the CAA's air traffic services economic regulation functions. Do you agree with this proposal?

***No comment***

**Q4.5** Do you agree that no further legislative changes are needed to ensure that the CAA is transparent about how it discharges its proposed new objectives? If you do not agree, please explain what more is needed.

***We can only comment on this when the new objectives are considered on a National, notparochial, basis but based strictly on your stated proposals there will be conflicts of interest between the safety, consumer and environmental protection aspects of the CAA's expanded role, which will need to be clarified by further legislation in the near future.***

### **The CAA's consumer role**

**Q5.1** We are proposing that the main focus for the CAA in pursuing its consumer objective should be on the "end users" of air transport services. This primarily means passengers but also includes freight consumers and the end users of services provided by general aviation; for example, pupils at flight schools. Do you agree with this proposal?

***NO. We believe the failure to clarify the definition of a "Consumer" is a significant failure of both the Pilling report and this consultation as it affects General Aviation, and particularly the Sports and Recreational sector. This needs considerably more evaluation, however, in essence a GA pilot is him or her self a "Consumer" particularly when operating in a non-commercial environment.***

***The question also assumes the respondent agree with this re-direction. As noted above we consider the case non-proven in respect of a best case national position.***

**Q5.2** Do you agree that the principles set out in 5.31 are the right ones for the consumer objective and should be reflected in legislation?

***As already commented in the Environment context, intervention of the secretary of state is contrary to declared independence.***

**Q5.3** The Government is not proposing to take legal powers to issue guidance to the CAA in respect of its proposed new consumer objective. Do you agree with this? If not, please explain why.

***As an independent regulator, given that is what is actually proposed, we would agree. However as already commented, the consultation is in conflict on this point.***

**Q5.4** What are your views on the costs and benefits of the proposed consumer objective as set out in the accompanying Impact Assessment? Do you have further information relevant to the Impact Assessment?

***We regard the impact statements as woefully inadequate and considerably below BRE standards: it incorporates far too many unknowns and n/a comments.***

**Q5.5** Do you agree that the CAA should be given additional concurrent competition powers over “airport services” which are not provided directly or solely by the airport operator? If not, please explain why.

***No comment***

**Q5.6** Do you agree that funding to support this proposed new consumer objective should come from the airport licensing regime? If no, how should this be funded?

***We observe there are no alternative mechanisms or models nor international methodologies considered. We regard this as a failure in the pre-consultation preparation but based strictly on your stated proposal the charges from this policy should be levied on the end user/consumer, via charges at airports. NOTE that we do not support the imposition of any such charges at smaller aerodromes or to GA users of larger aerodromes.***

**Q5.7** Do you agree that Passenger Focus should have a legal duty to consult on its budget? If not, what alternative would you recommend?

**Yes, if the proposal is agreed (see above comments).**

### **The CAA's environment role**

We have looked at two main options for giving the CAA an environment objective:

Option 1 (preferred): to give the CAA a general environment objective alongside the proposed safety and consumer objectives, which would require the CAA, where possible and appropriate, to have regard for environmental factors and to seek environmental improvements.

**Q7.1** For Option 1 – Do you agree that the CAA's general environment objective should require the CAA, where possible and appropriate, to have regard for environmental factors and seek environmental improvements? If you think there are environmental issues which would not be addressed by this proposal but should be, please set these out and explain why.

**See 4.1 In principle we agree but currently fail to see a satisfactory methodology whilst retaining independence.**

**The CAA could encourage innovation in respect of environmental matters in the context of its safety primacy – this has not been reviewed by this consultation.**

Option 2: to give the CAA a discretionary power which would enable, but not require the CAA to have regard to environmental factors.

**Q7.2** For Option 2 – Do you think that the CAA should have discretion in relation to its general environment objective and that this should be a second order issue for the CAA below its safety and consumer priorities? If so, please explain why.

**Yes, because the primary duty of the CAA must be safety regulation.**

**Q7.3** We would welcome stakeholders' views and evidence on the relative benefits and costs of the options as set out in the Impact Assessment.

**We regard the impact statements as woefully inadequate and considerably below BRE standards; there far too many unknowns and n/a comments.**

**Q7.4** We would also welcome stakeholders' views and evidence on which of these two options would be most appropriate for the CAA and why.

***On balance, without resolving comment against Q7.1, option 2 is likely a best action.***

**Q7.5** Do you agree that the Government should give the CAA guidance to help it interpret its environment objective? If you do agree, please set out what you think this guidance should cover and why.

***The CAA could be given the "steer", but not mandated, to follow a nationally agreed policy.***

**Q7.6** Do you agree that the Secretary of State should have new powers to direct the CAA in regard to its environment objective? If yes, do you agree that the proposals set out in 7.38 and 7.39 are the right ones? Please explain

***No- this creates an unacceptable conflict, see above.***

**Q7.7** Do you agree that any new funding requirements arising from a new environment objective should be met through the CAA's existing charging schemes?

***We believe the whole funding arrangements should be reviewed and until that is done such questions simply presume the ongoing methodology.***

## **Ensuring that proposed objectives fit with the CAA's existing functions**

**Q8.1** Do you agree that the principles of the proposed environment objective (Option 1) should apply to the CAA's planning and management of airspace?

***If this option is agreed - yes***

**Q8.2** Are there any areas where the interests of the "end user" and "intermediary users" would diverge in respect of airspace?



***We are uncertain of what these definitions mean and need a detailed analysis of how airspace management might change in these proposals. GA is continually losing class G Airspace, the lifeblood of the activity. We have serious concerns that under these proposals GA will be further disadvantaged***

***The intended and unintended consequences for GA are significant and need analysis.***

***As elsewhere, this consultation is inadequately presented to make meaningful comment. Separate evaluation is required.***

**Q8.3** What would be the costs and benefits of changing the existing regime for the planning and management of airspace to make it clear that the CAA should focus exclusively on the interests of “end users” where these interests diverged from those of “intermediary users”?

***GA is worth, per the Strategic review of GA by CAA 2006, at least £1.4 Bn to the UK economy. We believe that it is potentially a factor of 3 higher, especially when one builds in the related business/commercial interests. A focus restricted to Commercial Air Traffic and their user interests only would destroy that.***

***GA & S&RA also have a notable Social and Educational feature – see GA Strategic Review- which is at risk of serious damage by these proposals.***

**Q8.4** Do you agree that the principles of the proposed environment objective (Option 1) should apply to the CAA’s economic regulation of air traffic services?

***If this option is agreed, yes.***

**Q8.5** Are there any areas where the interests of the “end user” and “intermediary users” would diverge in respect of the CAA’s economic regulation of air traffic services?

***We are uncertain of what these definitions mean and need a detail analysis of how airspace management might change in these proposals. GA is continually losing class G Airspace the lifeblood of the activity. We have serious concerns that under these proposals GA will be further disadvantaged.***

***The intended and unintended consequences for GA are significant and need separate evaluation.***

**Q8.6** What would be the costs and benefits of changing the existing regime for the regulation of air traffic services to make it clear that the CAA should focus exclusively on the interests of “end users” where their interests diverged from those of “intermediary users”?

**As Q8.5**

### **Giving the CAA new information powers**

**Q9.1** Do these proposals to give the CAA new information gathering and publishing powers achieve the right balance between supporting the public and avoiding unnecessary regulatory intervention? Please give reasons for your answer.

***This assumes the proposals are carried – however the principle is correct.***

### **The CAA’s governance arrangements**

Do you agree with our proposals to:

**Q10.1** Remove the statutory requirement for HM Treasury to approve the remuneration of CAA Board members? ▲

**Yes**

**Q10.2** Amend the legislation so that the Secretary of State will in future only: (1) appoint and determine the remuneration of the Chair, any Deputy Chair and any non-executives and (2) approve the appointment of the Chief Executive? (Subject to certain requirements set out at 10.12, the appointment and remuneration of the Chief Executive and other executives would therefore become the responsibility of the CAA.) Please give reasons for your answers. ▲

**Yes, provided the recommendations in Pilling (para127) are visibly and transparently taken forward with a stakeholder right of audit viz: “it may be helpful for the CAA to have a checklist of areas that the Board and other decision-making bodies or individuals in the CAA should take into account when making decisions”. We note that GA are unaware of and certainly have not been consulted in respect of such a check list for their activities/ interests.**

### **▲The CAA's funding arrangements**

**Q11.1** We are proposing to remove the statutory sixty days' delay period and to replace it with a duty to consult charge payers. Do you agree with this proposal? Please give reasons for your answer.

**NO. CAA performance in this area does not merit that privilege. FRC have blatantly failed to observe BRE principles and we are unaware of any adequate response to a consultation comment (recent cost changes have referred back to the JRT review as justification when it is now generally accepted it failed the BRE test)**

### **▲The CAA's enforcement powers**

**Q12.1** To what extent does the CAA's current enforcement activity comply with the Macrory principles of Better Regulatory enforcement, as described in the box beneath paragraph 12.4? ▲

**We believe this has operated well .**

**Q12.2** Should the CAA have access to a broad range of civil sanction powers in addition to its existing criminal enforcement powers? What would be the potential costs and benefits of doing this?

**Prima facie this would seem, in principle, a good use of Macrory principles but by moving from criminal to civil law principles this changes the burden of proof. At present, under criminal law one is innocent until proven guilty and the CAA bears the burden of proof. ▲**

**Q12.3** Which areas of civil aviation law would be appropriately enforced using civil sanctions? Are there any areas, such as safety, where civil sanctions would not be appropriate? (We have provided a list at 12.17 of circumstances where we believe that criminal sanctions are more appropriate).

***We agree with your list***

**Q12.4** Which of the various types of sanctions (as set out in the box beneath paragraph 12.6) would be appropriate and effective for the CAA to use?

***The CAA should have all of these at it's disposal .***

**Q12.5** Do you agree that the CAA should be given an express power to bring proceedings?

***Based on continued application as currently - yes.***

**Q12.6** Should the CAA in future recover the costs of its formal enforcement activity from industry rather than from the taxpayer? If so, how should it recover these costs in an equitable way?

***NO. We represent GA & Sports & Recreational Flying akin to private motorists operating on roads used by commercial operators. That model should apply to aeroplanes and costs come from general taxation.***

### **Travel company failures: financial protection of air passengers**

**Measure 1: closing perceived loopholes by incorporating “flight plus” products into the ATOL scheme (NB this measure does not apply to airlines).**

**Q13.1** Should the legislation be clarified so that ‘flight plus’ products fall unequivocally within the scope of the ATOL scheme?

**No Comment .**

**Q13.2** How should we determine which products sold with flights are merely ancillary and should not therefore turn a ‘flight only’ sale into ‘flight plus’ holiday with financial protection? Please give examples.

**No Comment .**

**Q13.3** Should there be a cut-off time period after which the purchase of further significant holiday elements would no longer create a ‘flight plus’ or package holiday? If so, how long should this period be? Please explain your answer.

**No Comment .**

**Q13.4** Should holidays which are sold by companies purporting to act not as a tour operator but as an “agent for the consumer” be brought into ATOL protection?

**No Comment**

**Q13.5** What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

**No Comment**

**Measure 2: airline sales of “flight-plus” products**

**Q13.6** Would it be beneficial to consumers to bring package holidays sold by airlines under the ATOL umbrella, rather than providing financial protection through the current alternatives?

**No Comment .**

**Q13.7** Do you agree that click-through or affiliate sales (e.g. where consumers are directed from airline websites towards other holiday products) should be brought under ATOL protection?

**No Comment .**

**Q13.8** With affiliate sales, should there be a cut-off time period after which the purchase of further significant holiday elements would no longer create or be included in, a 'flight plus' or package holiday? (See question 13.3.). If so, how long should this period be? Please explain your answer.

**No Comment .**

**Q13.9** What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

**No Comment .**

**Measure 3: 'flight only' sales by 3rd parties**

**Q13.10** Which of the 3 options should be the basis for regulating 'flight only' sales by 3rd parties (i.e. all parties excluding airlines):

**Option A: exclude all 'flight only' sales from the ATOL scheme? Would this option create an unacceptable increase in consumer detriment?**

**Option B: include all "flight only" sales in the ATOL scheme but exempt all bona fide airline agents from paying the ATOL Protection Contribution (APC)?**

**Option C: retain the current arrangements?**

**Please explain your answer, elaborating where possible the pros and cons of the three options.**

**No Comment**

**Q13.11** *Option B: do you agree that the ‘ticket provider’ category is no longer fit for purpose in terms of clarity and consumer protection? If so, should the ‘ticket provider’ category be removed entirely (and therefore, all third party sales of flights would require ATOL protection).*

*Or, should it be removed in conjunction with the introduction of an ‘airline agent’ category, so that sales by ‘airline agents’ would not be required to make an APC payment but could carry the ATOL brand in return for alternative safeguards provided by the airline and its agents?*

**No Comment**

**Q13.12** *How would you define an “airline agent”?*

**No Comment**

**Q13.13** *What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?*

**No Comment**

#### **Measure 4 – a new “ATOL Certificate” for passengers**

**Q13.14** What are your views on the proposal that all consumers should receive an ATOL Certificate when booking an ATOL-protected flight or holiday?

**No Comment**

**Q13.15** What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

**No Comment**

#### **Measure 5 – Non-air packages**

**Q13.16** Would the proposal to allow existing ATOL-licence holders to protect their non-air package holidays through the Air Travel Trust bring benefits to these companies (through simplifying their procedures) without creating undue risk to the Air Travel Trust itself?

**No Comment**

**Q13.17** What are the implications of this proposal for those organisations which currently provide financial protection for non-air package holidays sold by ATOL-licence holders?

**No Comment**

**Q13.18** What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

**No Comment**

**Proposals for the rationalisation of the Secretary of State's airport byelaw confirmation function**

**Q14.1** Do you agree with our proposed six-step process outlined for making new airport byelaws? If not, what are your reasons and what alternative approach would you suggest?

**No Comment**

**Q14.2** Do you agree that the publication of model byelaws will retain appropriate democratic accountability within the process for making airport byelaws? (See also Q14.5). If not, why, and what alternative approach would you suggest?

**No Comment**

**Q14.3** Do you agree with our proposals on resolving challenges (see 14.16)? If not, why, and what alternative approach would you suggest?

**No Comment**

**Q14.4** Do you agree that in cases where proposed airport byelaws follow the model airport byelaws, or only vary slightly from them, these byelaws should no longer require the Secretary of State's confirmation?

(And that the Secretary of State's involvement should be limited to where he can add the most value, such as, in relation those byelaws that vary significantly from the model airport byelaws). Please explain the reasons for your answer.

**No Comment**



**Q14.5** Do you agree that the provision of:

- published model airport byelaws;
- the requirement for airport operator to consult interested parties when developing new byelaws; and
- the ability for the validity of airport byelaws to be challenged in the courts

Would provide sufficient protection to the public against the risk of flawed

byelaws? If not, why not and can you suggest how our proposals could be adjusted to provide sufficient protection?

**No Comment**

### Medical data sharing

**Q15.1** Do you agree in principle that making medical data on air crew available for research (which is anonymised for research purposes) is beneficial, given the safeguards provided by the Data Protection Act 1998? (See paragraphs 15.6-15.7 and the draft Impact Assessment for more information). Please explain the reasons for your answer.

**YES, anything morally and legally acceptable to generate better safety performance is a good thing.**

Please email your response to:

**Regulating\_air\_transport.consultation@dft.gsi.gov.uk**

Alternatively, it can be posted to:

**Consultation on Regulating Air Transport**

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