

GENERAL AVIATION ALLIANCE

Partnership in Aviation

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GA Alliance Initial Position Paper on DfT Consultation Document

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

General Aviation (GA) is at least a £1.4billion industry in the UK, employing thousands of people, and providing many essential services. In economic terms, GA represents circa 13% of UK aviation. The GA Alliance (GAA) is a broadly-based grouping of GA and S&RA (Sports and Recreational Aviation) organisations, with a total of 72,000 members out of the approximately 100,000 people involved with GA in the UK. We aim to co-operate and consult with government and other organisations to support and progress GA interests.

We wish to comment at the outset that we consider the consultation to be flawed and have complained about the process, per the Better Regulation Executive guidelines, to the Consultation Co-ordinator at the DfT and via Parliamentary channels. Our comments that follow do not mean we accept the consultation process as currently underway and we comment further on this at 2.a). below.

Furthermore, we attach at Appendix 1 a copy of the paper "Review of the Civil Aviation Act 1982" we submitted to both David Shephard at the DfT on 14th April 2009 and Emma Wallage at the DfT on 14th September following discussions with them by our member Bob Oliver. We offered to have "...early engagement with the departmental team and stands ready to discuss all aspects of the review and, in particular, the matters raised in this paper", but despite subsequent efforts on our part to pursue this we were not invited to do so.

We do consider that if the engagement had taken place GA issues would have been addressed and now ask how the consultation addresses the issues our paper raised?

1. Background of the Pilling Report:

The subject consultation specifically sets out:

"to give citizens an independent regulator who's primary focus is the pursuit and protection of citizens' main interests; and to achieve this through targeted, transparent and proportionate regulation in order to maintain a healthy air transport sector. Accordingly, our principal proposal is to reform the statutory framework of the CAA to place the interests of the consumer and

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European Association of Instrument Rated Pilots

the environment at the forefront of the CAA's decision making, while maintaining the CAA's emphasis on safety".

A strong environmental theme is also introduced.

The consultation largely builds on Sir Joseph Pilling's Strategic Review of the CAA (2008). That report included a recommendation that the CAA should have a general statutory duty in relation to the environment with a clear policy framework from Government. In terms of the consumer, Sections 225 and 226 of the Pilling Report stated:

"225. We note that the CAA and the Office of Fair Trading are working together with a view to the CAA becoming more involved in enforcement of consumer issues, such as airline terms and conditions. The two organisations are developing a Memorandum of Understanding to this effect. The CAA also has a role in enforcing EU passenger regulations.

226. The review received evidence suggesting that the CAA should have a general responsibility towards consumers across all its functions, as distinct from a specific consumer responsibility for economic regulation. In Chapter 3 on the CAA's role and status, the review recommends that DfT and the CAA work together to tidy up the legislation relating to the performance of the CAA's functions. In doing so, they might take account of the potential for a general duty related to passengers or consumers."

These points appear to have been key, in the genesis of the consultation proposals.

However, Pilling set aside much of the GA submission and evidence. The Pilling Inquiry was not a consultation, confirmed in the forward where Sir Joseph stated that the recommendations are 'his', for which he accepts responsibility. He did not examine wider options and was seemingly not subject to Better Regulation principles.

This, we contend, is not a proper background for radical proposals to be brought forward impacting a significant sector which has not been adequately consulted. These proposals seem intended to provide a way forward for the CAA as a quango, rather than an attempt to properly regulate a diverse and safety-critical sector.

We observe that the proposed extension of existing CAA responsibility outside safety has not apparently considered other options providing a UK optimal proposal eg that such work could/should be done by The Office of Fair Trading or another relevant body. We have no position on this at this time. However, we note in this context the general inadequacy of the impact statements which is where in part the proof/validation should rest

2. GA Alliance initial position on the DfT consultation proposals

a). The consultation process is flawed.

GA has not been adequately considered in generating this consultation. Indeed GA is barely mentioned in the proposals. Apparently, this is a result of a 'high level' direction towards giving the CAA new general objectives.

As noted in a DfT post-consultation supplementary statement, the consequences for GA depend on how the CAA will carry them out within its regulatory function, which will be based primarily on consumer and environmental interests. The gap between the overall direction and the detail of how GA might be affected is fundamentally too large, especially given the lack of consultation with GA in developing these proposals. Such a gap gives no opportunity to evaluate the implications, let alone potential unintended consequences.

We believe that this consultation has signally failed in key stakeholder identification and engagement, one of the basics of good regulation. We know of no DfT pre-consultation with GA as a major stakeholder group. Our own self-initiated pre-consultation paper submitted to DfT (14th April 2009), in anticipation of changes to the Civil Aviation Act, received no response. These deficiencies must be addressed.

To give adequate consideration of GA the DfT should provide a considered and adequate supplementary consultation upon which this consultation must be contingent.

b). The Proposals.

There are several major issues, specifically impacting GA:

i) Consumers are not the only End Users.

The primary focus is on the interests of the travelling public, construed as the “End Users of air transport services”.

Others, such as air freight consumers and the “end user of services provided by GA – e.g. pupils of flight schools” (*this is the first of two mentions of GA in the proposals*), are clearly identified as of secondary importance.

The airline industry is referred to as an “intermediate user” – for example, of air traffic services. This limited and inadequate concept is a result of the lack of stakeholder analysis and provides no basis for regulating a significant sector of UK aviation. In GA, and especially Sport and Recreational Aircraft (S&RA) the typical pilot/operator is regulated by, and is the direct consumer of, CAA services in being able to operate.

ii) The European dimension is ignored.

There is apparently no consideration of the GA regulatory process in the proposal and implications arising from the Basic Regulation EC 216/2008 (a significant subject in its own right). These include the CAA moving from being a *regulator* to an *overseer* of Airworthiness, Operations and Licensing issues, working under the European Aviation Safety Agency (EASA).

Similarly, there is no consideration of European Resolution 2008/2134 (*An Agenda for Sustainable Future in General and Business Aviation*) which includes a Commission requirement for national governments to take account of this sector and report back to the Parliament. We also note that for the remaining nationally-regulated aviation sectors (Annex 2, which covers much of S&RA) nothing at all is presented.

iii) The CAA’s role as a prosecutor.

The second (and only other) reference to GA in this consultation notes it as the area where most CAA prosecutions take place.

The proposal is that the CAA covers the cost of aviation enforcement from charges on ‘the industry’, and introduces the concept of civil sanctions which will enable the CAA to penalise minor and technical breaches of regulations, which currently it rarely chooses to do. The burden of proof must remain with the CAA. An example of an unintended consequence of a change of this principle is that pilots are encouraged to use safety equipment which advises of their position. If there is the prospect of such information being used against them via a civil penalty in the case of a minor transgression they will not use it and thereby put their and others safety at risk.

In the context of Better Regulation, we fail to understand why there has been no pre-consultation on this area, which is of acknowledged importance to GA. Experience in other areas suggests that unintended consequences, and even abuses, stem from such proposals (e.g. car parking enforcement). The law is available and the courts provide a remedy where serious offences are committed

iv) The financial consequences.

The 'industry' will pay for the CAA's proposed new activities of protecting the consumer and the environment, although these are public benefits.

The 'impact assessment' provided gives no estimates for most of the proposed extra costs. No doubt the airlines will ensure that the travelling public pays for these benefits, by passing on the CAA charges. For much of GA and particularly for S&RA (private aviators have no customers), this is inequitable and will lead to higher CAA charges for licensing, small businesses and aerodromes, etc. We also object to the CAA being required to make a return of nearly twice the 'normal' (6% against 3.5%) government standard. Vitally, there is no implicit consideration of cost allocation issues between the airlines and GA. This is of significance against a background of recent CAA cost allocation practice which has failed in terms of equity and regulation standards.

3. Summary.

- i) The consultation is flawed and should be withdrawn or there should be an adequate additional supplement issued for GA to address following more pre-consultation with the industry.
- ii) There should be competent impact assessments prepared covering GA; there are none at present.
- iii) Alternative methods of protecting the consumer need to be identified leaving the CAA to continue as safety regulator. Consumers are not the only END users.
- iv) The European dimension is ignored.
- v) The new principle proposed for the CAA's role as a prosecutor needs to be reconsidered. Macrory principles are not acceptable in this case; the CAA must retain the burden of proof.
- vi) The financial consequences of the CAA's new activities should be reconsidered.
- vii) In any event the consultation period should be extended to run 12 weeks from the 5th February being the date on which the DfT circulated a note of the proposals to GA organisations identified to them by the GAA and others.

We have also responded to the web based comment response document.

Paul R Draper
for G A Alliance

Attached -Appendix 1 Review of the Civil Aviation Act 1982 (GAA paper April 2009)

Monday, March 08, 2010

General Aviation Alliance

A pre-consultation position paper on

THE CIVIL AVIATION ACT 1982

14 April 2009

REVIEW OF THE CIVIL AVIATION ACT 1982

Pre-consultation submission by the General Aviation Alliance (GAA)

Introduction – General Aviation and its representatives

The term General Aviation (GA) describes all aviation activity except airlines and military i.e. civil aircraft operation other than commercial air transport. The principal sectors of the GA industry include sport and recreational aviation (S&RA), personal transport for business and private purposes, flying training, corporate aviation, aerial work and a wide range of ancillary activities including maintenance, aircraft and equipment development, production and sales and airport services.

The UK GA sector encompasses some 7,500 UK registered and 1,000 USA registered powered aircraft (including 1,000 helicopters), 2,300 microlights, 2,600 gliders, 740 balloons/airships, 62 gyroplanes plus 5,500 hang-gliders and para-gliders and approximately 1,000 UK civil airliners. In addition parachuting and aero-modelling activities are within the scope of CAA regulation.

Shared ownership of GA aircraft is a commonplace in the UK, so the number of people directly involved in actually flying GA aircraft is far higher than the 19,000 (excluding civil airliners) aircraft mentioned above would suggest. To that number can be added the considerable numbers of non-pilots (predominantly family members and friends of pilots) who regularly fly as passengers in GA aircraft. And to give an indication of the extent of wider public interest in the GA sector it should be noted that air shows are, with the sole exception of football matches, the most popular spectator activity in the UK, with attendances running at over 6.5 million per year.

The General Aviation Alliance (GAA) is a group of organisations representing the interests of many in the UK General Aviation sector. It was formed in 2004 in response to concerns about the fragmented representation of GA and the need to present a co-ordinated UK level responses to CAA and EU initiatives, the latter through a pan-EU representative organization, Europe Air Sports.

Members of The Alliance include:

- British Balloon and Airship Club (BBAC)
- British Gliding Association (BGA)
- British Hang Gliding and Para Gliding Association (BHPA)
- British Microlight Aircraft Association (BMAA)
- British Parachute Association (BPA)
- Helicopter Club of Great Britain (HCGB)
- Light Aircraft Association (LAA)
- PPL/IR Europe – European Association of Instrument Rated Private Pilots
- Royal Aero Club of the United Kingdom (RAeC)

These bodies alone have upwards of 72,000 subscription paying members.

The GAA and the review

The General Aviation Alliance welcomes the government's intention to review the Civil Aviation Act 1982 in the light of the Civil Aviation Authority (CAA) strategic review of general aviation in the UK and the Pilling report of the strategic review of the CAA. The Alliance wishes to play a constructive part in that review. It undertakes to assist in the identification of issues, to provide an authoritative and evidence-based consensus view on issues under consideration, to respond as expeditiously as possible to any requests and to provide such further views, opinions and evidence as may be considered helpful, either in writing or in person through an appointed representative.

The headline position of the Alliance is that it supports the retention of general regulatory functions by the CAA in respect of commercial air transport as recommended by Sir Joseph Pilling but draws attention to the need to distinguish in law and practice between commercial air transport and General Aviation (GA).

The objective of this pre-consultation submission is to begin a constructive dialogue with a view to securing a future direction for the government that promotes and supports the development of a vibrant, enterprising, innovative and economically energetic GA sector. The Alliance repeats its undertaking, given above, to engage constructively in the review of the legislation and to assist and support the department in applying to the review the principles of evidence-based policy making that has regard to risk and proportionality and is accompanied by a clear assessment of the impacts of any changes in legislation, policy or practice.

Matters for consideration

An initial identification of areas where the legislation might be amended has been made. The issues identified by the General Aviation Alliance call not for wholesale revision of the legislation, merely a re-definition of general functions and objectives. This, with some consequential amendments, would take account of the recommendations in the Pilling and CAA strategic reviews to recognise and promote the role, the needs and the potential of the GA community as opposed to those of the Commercial Air Transport sector. This would have implications for change to the 1982 Act, principally in Part I, Sections 1, 3, 4, 11, 16 and 21, Part III, Section 73 and Part IV Section 85.

There follows a brief outline of the issues and considerations and some initial suggestions for change:

1 - Bias – Policy development and delivery in the fields of legislation, regulation and charging is weighted in favour of Commercial air transport. Consequently, GA, and to a greater extent, Sport and Recreational Aviation (SRA), bears a disproportionate and inequitable burden. Section 4 of the Act

of 1982 exemplifies that bias and was identified as a candidate for change by Pilling.

2 - Representation - GA does not have equal standing with the airlines, airports, air traffic service providers and other major economic players in government and CAA policy development, European decision-making and safety, airspace and other regulation and pricing decisions. This could be remedied by introducing a duty to have regard to GA in (and also possibly bring GA representation into) the policy development and delivery and regulation management processes. Pilling favoured such a duty but recommended against making it a general duty to promote GA on the CAA. The GAA supports this view and believes such a general duty may be appropriate for inclusion in Section 1 of the 1982 Act as an extension of the general duties of the Secretary of State.

3 - Regulation – The nature and degree of regulation necessary to improve safety, commercial propriety and national economic development in Commercial Air Transport is inappropriate and disproportionate when applied to GA. It fails to have regard to the need for evidence based and risk assessed intervention and acts against the interests of users, business and the public at large. The Act could be amended to place a duty on the CAA and others to keep under review its functions, policies and practice and distinguish effectively between GA and Commercial Air Transport in their development and delivery

4 - Charging – Charges by the CAA and the manner of their determination and application fail the tests of equity and proportionality when applied to GA. It is generally bad practice and leads to institutional inefficiency when a regulator has discretion to determine both the degree and extent of regulation and the charges for that regulation without an operating framework that requires an evidence base for the degree of regulation and efficiency targets for delivery. Section 11 makes no distinction between the methods of determination of charges as between different aviation sectors.

5 - Accountability – It is in the nature of regulatory bodies to focus on processes, and lose sight of the bigger picture. Increased transparency within government and the regulatory authorities and a clear line of accountability to stakeholders and parliament can provide a remedy. This could be achieved by, for example, a requirement for consultation, disclosure of business and operational plans and periodic reports to parliament, both on the general discharge of functions and on the determination of charges (Section 21 offers one avenue for pursuing that objective).

6 - Enterprise – GA in the UK is a potential nursery for new enterprise. GA and those involved in it, directly or indirectly through the various supply chains have a significant role in the economy and it runs counter to national interests, particularly in troubled times, to stifle enterprise. Introducing a general obligation to promote the GA sector (e.g. in Section 1) would ensure that the development of GA in the UK could be integrated beneficially into the wider spectrum of government policy development.

GA is heavily regulated and the evidence base for that regulation and the impact on the technological and economic development of the predominantly small and medium enterprises (SMEs) that support GA do not appear to have been properly evaluated against the risks presented.

Increased freedom in the design, development, manufacture, operation and maintenance of GA (especially SRA) aircraft - with proportionate safeguards for safety – makes sense. And that increased freedom will, in turn, fuel developments in materials and component development, airfield operation and flight training.

7 - Linkages – GA and its potential for development is affected by a range of other issues. The CAA strategic review recommended that government make a policy statement on the value of maintaining a viable network of GA airfields. This is worth developing, but could also benefit from extension. There are no GA-specific economic stimulation policies and other areas of government policy and intervention impact on the GA community. Once again, the introduction of a general duty to promote, to act as a ‘champion’ for GA, would allow improved cross-government co-ordination.

Conclusion

The General Aviation Alliance submits this paper in order to open a debate prior to the publication of the Department for Transport consultation paper. It is intended to be helpful but there is clearly a long way to go before proposals for legislation can be prepared and the GAA is desirous of playing an active part throughout the process and beyond.

The GAA would welcome early engagement with the departmental team and stands ready to discuss all aspects of the review and, in particular, the matters raised in this paper.

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