

## 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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(if applicable)

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  
 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:

If you would like your response or personal details to be treated confidentially please explain why:

**New objectives for the CAA**

**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.

No. The council has previously commented that there is a need to improve democratic accountability of the CAA. There is a need for all decisions made by CAA officials to be subject to a formal appeal / public inquiry procedure. Judicial Review, as noted by the HoC Aviation Select committee in 2007, is an inadequate and often inappropriate forum for seeking to challenge decisions of a public corporation.

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

The Economic Regulation duties currently performed by the CAA should be incorporated as part of the duties of a new regulatory body for aviation

**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 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

**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?

Please see answer to question 4.2 above.

**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.

No – there is a need for all the CAA's decision making process to be subject to a formal appeal / public inquiry procedure outside judicial review.

## 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?

The CAA's consumer role needs to continue but as part of the overall duty of a new aviation regulator and not simply as a continuation of the existing arrangements.

**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?

Yes – but this council does not agree that the CAA should remain in its present form as the regulator. We wish to see a new Independent regulator unfettered by influence from government.

**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.

Although LAANC agrees that the government should not be issuing what would amount to “statutory guidance” to the aviation regulator, it does not support the proposal that the CAA (in its present form) should continue to hold this regulatory responsibility.

**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?

LAANC has no specific views on the costs and benefits that are proposed. We believe that this aspect should form part of a root and branch review of the aviation regulatory role.

**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.

LAANC agrees that there is a need for the aviation regulator to investigate anti competitive practice across the role range of UK aviation services. We do not however believe that this role should simply be extended to the CAA in its present form.

**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?

Although this would seem sensible, LAANC believes that a root and branch review of the aviation regulator is may well identify other funding opportunities

**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?

LAANC supports the principal that when charges are being levied by a regulator the charges should be subject to prior consultation and scrutiny. As proposed this authority is not convinced that any such consultations can be meaningful. There are also concerns that the CAA's new environmental duties appear to be unfunded and there will be temptation to simply bolt on environment to consumer protection. This is another reason why this authority believes there needs to be a full root and branch review of the role of aviation regulator.

## 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.

We believe the wording surrounding Option 1 is ambiguous. The proposal to insert an environmental duty on the CAA's activities as announced by the Secretary of State for Transport is broadly welcomed. However we seek substitution of the proposed description in this consultation which describes this new responsibility as a "general environmental objective". An objective may be seen as no more than an intention whereas the word duty confers and obligation and responsibility. LAANC considers that this is particularly

important in relation to the planned expansion of Heathrow in which the S of S identified the CAA as having a central role in the release of any capacity beyond the current level of 480,000 annual atms.

The proposals do nothing as they stand to identify a single regulatory body which will have clear ownership of an overarching environmental duty for aviation. This lack of clarity has in no small part been responsible for the current air quality non compliance issues that affect Heathrow now and in the foreseeable future. In this council's view anything less than a direct duty the regulator for aviation will be ineffective and simply serve to maintain the status quo. For these reasons the council believes that the general duties that are being proposed should be vested in a new regulatory body.

The proposals add nothing to the policy vacuum surrounding just how the aviation regulator will be expected to drive achievement of the government's 2050 target for carbon reduction. The recent CCC report has highlighted the need for government to reduce overall atms from the growth that was identified as being necessary to plan for in the 2003 Air Transport White Paper. This may well require at some point in the future the aviation regulator to free to take enforcement action so as to limit growth at some airports. The aviation regulator therefore needs a clear mandate to act without undue interference and or influence from industry and / or government departments.

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.

This proposal is not supported. Environmental limit values for air quality already have legal force. In time, the S of S for Transport has given an undertaking that at Heathrow noise levels will also have legally enforceable legal limits and time frames. In the council's view it is therefore not good government to only provide the regulatory authority (that will be responsible for ensuring compliance with the standards) *discretionary powers* of enforcement.

LAANC also does not support the alternative approach at 7.27 of the consultation which proposes that the CAA might be given targets to ensure the delivery of specific environmental outcomes. We agree that there could be a risk with this target driven model that environmental risks might be given undue weight in a decision where it was not the most significant factor.

It is this council's view that setting environmental limit values for specific airports is the correct approach. Although this may mean the larger airports being subjected to the strictest environmental limits this would be equitable as these airports are the ones which higher numbers of people living close to

them. Such an approach would be in line with the polluter pays principle. A requirement to comply with environmental limits would also help identify the situations and locations where the environment needs to be treated as priority

**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.

The mechanism for environmental enforcement has not been developed and included in this consultation. It is therefore difficult to comment objectively on the costs and options set out and further information is needed. For example the requirement to meet and achieve local air and noise standards may involve the purchasing / hiring of monitoring equipment, modelling work – this is not included so far, neither are the costs that may have to borne by the aviation industry in investment in cleaner technology in the form of new aircraft and / or engines

**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.

LAANC does not support either of the proposed options. We repeat our belief that there needs to be a full root and branch review of the now expanded role of aviation regulator.

**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.

No - The concept of "statutory guidance "is not supported by LAANC. The aviation regulator should unfettered in this respect.

**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 – The Regulator should be under a duty not only to monitor compliance with government policy and limit values that be adopted either by way of EU directive or UK Regulation but also to ensure that government acts reasonably and in accordance with the law.

**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?

No –LAANC believes that a full root and branch review of the Aviation regulator should be undertaken so that options for funding can be looked at afresh.

## 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?

Yes , but with the proviso as set out above, that decision by the Director of Airspace Policy should be open to challenge on a technical / merits point through an appeal policy rather than only on points of law by way of Judicial Review

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

None that we are aware of

**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"?

There would be the benefit of giving some confidence to those who will be affected by airspace change proposals that their interests have at least been considered on equal footing to the needs of the promoters of the change proposal.

**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?

As set out above, LAANC is concerned that in this case the Regulator will not be under a specific duty to consider the environment. As per our previous comment we are concerned that the use of the term objective does not impose the same degree of responsibility on the part of the regulator for discharging its duty as would a duty.

**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?

None that occur

**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”?

## 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.

Yes

## 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.

## 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.

## 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?

**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?

**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).

**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?

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

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?

Yes – but in respect of the environment this needs special consideration, the cost assessment cost gives no indication as to how it is proposed to fund the provision of scientific monitoring, which may be necessary to monitor compliance with government policy and EU standards.

## 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?

Yes

**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.

The product should be part of the holiday once departure has occurred from UK – thus flight + car hire / coach/ taxi transfer abroad would count – but not a flight + discount UK airport parking

**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.

Yes. This should be within 24 hours – enough time to give consumers chance to compare offers

**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?

Yes

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

This authority has no comment to make other than to re state its earlier view that costs and benefits should form part of a comprehensive review of the role and structure of the aviation regulator.

**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?

Yes

**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.

Yes – 24 hrs

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

**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.

**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?

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

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

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|---|
| <b>Measure 4 – a new “ATOL Certificate” for passengers</b>  |
| <b>Q13.14</b> What are your views on the proposal that all consumers should receive an ATOL Certificate when booking an ATOL-protected flight or holiday?   |
| This seems a sensible proposal and is supported   |
| <b>Q13.15</b> What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?  |
| No comment  |
| <b>Measure 5 – Non-air packages</b>   |
| <b>Q13.16</b> 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? |
| This aspect is outside this authority's area of knowledge   |
| <b>Q13.17</b> 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?  |
| This aspect is outside this authority's area of knowledge   |
| <b>Q13.18</b> What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?  |
| No specific comment other than to repeat the council's view that costs and benefits should form part of a root and branch review of the role of the aviation regulator.   |

## 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 – whilst it is agreed that the Secretary of State does not need to be involved any longer in the process, the aviation regulator should have a supervisory and dispute management role.

**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?

Only in part. although the concept of model byelaws would seem sensible their publication without supervision and management by the regulator will not in this authority's view provide the required amount of democratic accountability. – please also see answers 14.1 above and 14.3 below.

**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. The proposal is not supported

Bye law disputes and resolution should not be dealt with in isolation to other areas of aviation regulation where in many cases there is currently either inadequate or no form of dispute resolution available at all. A full root and branch review of the role of the aviation regulator should be undertaken in order that the whole area of dispute resolution within the aviation regulatory framework can be updated and made effective.

**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.

Yes – this is in line with adopted practice in other areas of public control where byelaws are used.

**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?

In principle yes, but the use of an alternative disputes resolution mechanism administered by a new independent regulator would be the preferred option.

## 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.

In principal this would seem sensible, but this authority believes the management of confidential medical data should be subject to independent review and not simply handed over to the CAA as part of its existing functions.

Please email your response to:

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