



Department
for Transport

Increased fines for infringements of the Rules of the Air

March 2016

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Executive summary

- 1.1 This Consultation Paper invites views on the proposal to increase the maximum fine which can be applied to persons contravening aspects of the Standardised European Rules of the Air (SERA).
- 1.2 The proposed changes will apply exclusively to the SERA regulations on communicating with Air Traffic Control, flight plans and position reporting.
- 1.3 The Department for Transport proposes to amend the Air Navigation Order to allow for the maximum fine for such offences to be increased from Level 4 to Level 5.
- 1.4 The maximum for a Level 4 fine is £2,500 and for a Level 5 is £5,000. However, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 now allows for all Level 5 fines to be made unlimited in England and Wales. LASPO does not apply in Scotland or Northern Ireland, where the penalty for such offences would increase to a maximum Level 5 (£5,000).

How to respond

The consultation period began on 17 March 2016 and will run until 22 April 2016. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at www.gov.uk/dft or you can contact Hannah Hodgson (details as below) if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer

generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Transport (DfT) will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposals

Background

- 2.1 This proposed policy toughens the response to the problem of non-communication by aircraft in UK airspace. The main issue is that each year some aircraft fail to maintain two-way communications with Air Traffic Control (ATC), although some incidents involving failure to file flight plans also occur. Such incidents trigger an escalating response which on occasion includes the costly launch of military aircraft and could ultimately lead to potentially fatal military intervention. Whilst to date there have been no prosecutions, the current maximum level of penalty for such offences is not considered to be an adequate deterrent or punishment in the more serious cases.
- 2.2 The Standardised European Rules of the Air (SERA) set out the actions pilots must take. Previously these had been set out in the Air Navigation Order (ANO)¹. While SERA is directly applicable EU legislation, the penalties for contravening its provisions remain in the ANO.
- 2.3 Currently, a person contravening relevant provisions of the SERA, for example the need to maintain two way radio communications with ATC, is liable on summary conviction to a maximum Level 4 fine (maximum £2,500) on the Criminal Justice Scale.
- 2.4 These incidents continue despite pilots being well aware of the ANO's requirements regarding communications with ATC, which have been in existence since at least 1981 and are promulgated through various freely available sources such as the Aeronautical Information Service and HMG and CAA websites. These requirements are based on international standards established by the International Civil Aviation Organisation, in accordance with the Convention on

¹ For the requirement to comply with the Rules of the Air see article 160(2). A level 4 penalty is imposed on non-compliance through article 241(6) and Part B, Section 1 of Schedule 13.

International Civil Aviation. In addition, DfT undertakes regular proactive educative efforts reminding industry of their responsibilities and, post-incident, identifies and pursues lessons learnt with the pilot and/or company in question, to mitigate the chance of repetition.

- 2.5 It is proposed that introducing unlimited fines would be more appropriate and proportionate to penalise negligent behaviour where regulations are not adhered to in circumstances within the pilot's control; they will provide greater incentive for pilots and airlines to ensure that they take the required actions and therefore reduce the chances of such incidents triggering security concerns and a large-scale response.
- 2.6 It is acknowledged that such incidents may occur outside of the pilot or operator's control. There are a number of such possible mitigating factors, which may negate the need to seek prosecution following an incident. These include the incident occurring but being resolved before the aircraft entered UK controlled airspace; or the incident occurring due to other factors such as technical issues, inclement weather or error by Air Traffic Control etc.
- 2.7 In addition, aircraft operators are unlikely to be prosecuted if they are able to show that they had detailed procedures in their operations manual, which had been approved by their national aviation authority, and that they had provided the required training to their pilots, and thus exercised all due diligence to prevent the incident from occurring.

Option 1 - Do Nothing

- 3.1 The do nothing option would mean that pilots and/or aircraft operators contravening the relevant sections of SERA would continue to be eligible on summary conviction for fines not exceeding £2,500. The current level of fine is judged to be insufficient given the consistent occurrence of incidents and the potential consequences of such events. It is expected that offences would continue to be committed with a frequency roughly consistent with that in recent years. This is the option against which all other options are assessed.

Option 2 – Increasing the criminal penalty

- 4.1 In this option we would increase the maximum fine for pilots and/or operators failing to take proactive actions to maintain the required two-way communications with Air Traffic Control from a Level 4 (£2,500) to an unlimited fine.
- 4.2 This would be achieved by introducing an Order in Council amending Schedule 13 of the Air Navigation Order, to allow for a maximum Level 5 (previously limited to £5,000, now unlimited) penalty for persons contravening the relevant provisions of SERA.
- 4.3 The increased penalty would apply to the following offences under SERA:

SERA.5005 Visual flight rules (VFR)

This requires VFR flights operating within or into designation areas or routes to maintain continuous air-ground voice communication watch on the appropriate communication channel of, and report its position as necessary to, the air traffic services unit providing flight information service.

SERA.5025 IFR — Rules applicable to IFR flights outside controlled airspace

(b) Communications

This requires aircraft operating under instrument flight rules in uncontrolled airspace but within airspace designated under SERA.4001(b)(3) or (4) to maintain an air-ground voice communication and establish two-way communication, as necessary, with the air traffic services unit providing flight information services.

(c) Position reports

This requires aircraft that are operating under instrument flight rules in uncontrolled airspace and that are required to maintain an air-ground voice communication watch to follow the position reporting requirements specified in SERA.8025 for controlled flights.

SERA 8020 – Adherence to flight plan

This requires that pilots must adhere to current flight plan unless a request for a change has been made and clearance obtained from appropriate air traffic control unit.

SERA 8025 – Position reports

This requires that pilots must report to the appropriate air traffic services unit the time and level of passing each designated compulsory reporting point. In the absence of designated reporting points, position reports to be made at intervals prescribed by competent authority or appropriate air traffic services unit.

SERA 8035 – Communications

This requires aircraft to maintain continuous air-ground voice communication watch and establish two-way communication as necessary with the appropriate air traffic control unit.

4.4 Under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, all Level 5 fines may be unlimited on summary conviction in England and Wales. This will allow for an unlimited fine to be levied where appropriate. It is noted that LASPO will not apply in Scotland or Northern Ireland, where the penalty for the listed offences will remain at maximum Level 5 (£5,000).

4.5 This is our preferred option.

Benefits

4.6 Introducing unlimited fines would be more appropriate and proportionate to penalise negligent behaviour where regulations are not adhered to in circumstances within the pilot's control.

4.7 In addition, unlimited fines will provide a greater incentive to pilots to ensure that they take the required actions and thus reduce the chances of triggering security concerns, which may

ultimately require costly and potentially fatal military involvement to resolve.

Costs

- 4.8 These sanctions will apply to any pilots flying in controlled airspace in the UK who contravene the regulations, as well as operators failing to comply. This is consistent with the current sanctions, which also apply to pilots and operators. There will be no additional costs of compliance – these are existing and on-going obligations – and no fines levied on industry if they comply with regulations.
- 4.9 Where prosecutions do occur, whilst the fine amount is unlimited the fine will have to be proportionate and have to have regard to the financial circumstances of the individual being fined.
- 4.10 The Regulatory Policy Committee has confirmed that the policy proposed would be a low cost regulatory measure and therefore suitable for the fast track process.
- 4.11 Over the next few months the Government also intendeds to seek evidence, views and comments from those who may be affected by the introduction of civil sanctions for use by the Civil Aviation Authority as an alternative to existing enforcement measures, which currently range from warning letters to criminal prosecution.
- 4.12 In addition DfT, the Civil Aviation Authority and NATS are considering the possibility of requiring aircraft operators in controlled airspace to monitor the emergency 121.5 MHz Guard frequency used by Air Traffic Control to resolve incidents of lost communications with aircraft. That will be the subject of a further consultation as necessary.

Consultation questions

For each question below please explain the reason(s) for your answer and provide evidence when available.

Q1. Policy option 1: Do nothing – this means not changing the law and contraventions of the relevant provisions of SERA continuing to be subject to a maximum Level 4 (£2,500) fine. Is this your preferred policy option? Please explain your answer.

Q2. Policy option 2: This means amending the Air Navigation Order to allow for the maximum fine for the relevant provisions of SERA to be increased from Level 4 (£2,500) to Level 5 (previously £5,000, now unlimited). The implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in March 2015 will then allow for all Level 5 fines subsequently to be made unlimited in England and Wales. Is this your preferred policy option? Please explain your answer.

Q3. How would you expect the increased fine to impact your business/organisation?

Q4. Do you think the use of a Level 5 fine (unlimited but limited to £5,000 in Scotland) would be proportionate in some circumstances? What would those circumstances be?

Q5. Do you think a fine exceeding £2,500 would be proportionate in some circumstances? What would those circumstances be?

Q6. Do you think the increased fine will serve as a disincentive to offenders?

Q7. In your view, are there any other measures DfT could employ to discourage pilots and/or aircraft operators from contravening the relevant provisions of SERA? For example, would requiring pilots to monitor 121.5 MHz Guard frequency assist?

Q8. Are you aware of any other barriers that may prevent/discourage pilots from maintaining continuous two-way communications with Air Traffic Control?

What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on www.gov.uk/dft. Paper copies will be available on request.

Question and answer brief

Below is a list of frequently asked questions about these proposals.

1. Where can I get further information about current legislation relating to lost communications?

You can view the Air Navigation Order 2009 online [here](#). The Standardised European Rules of the Air (SERA) are available [here](#).

2. Where can I get further information about the Legal Aid, Sentencing and Punishment of Offenders Act 2012?

You can view the Legal Aid, Sentencing and Punishment of Offenders Act 2012 online [here](#).

If you still have questions after you have read this section please contact:

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Further background information can be found at www.gov.uk/dft

Annex A: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available on the Better Regulation Executive website at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

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Please do not send consultation responses to this address.