



Department  
for Transport

# Consultation Response on Legislation for Enforcing the Development of Airspace Change Proposals

**Moving Britain Ahead**

**October 2019**

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# 1. Introduction

- 1 In December 2018, the Department for Transport (DfT) published a consultation entitled 'Aviation 2050 – the future of UK aviation'<sup>1</sup>. Annex A to the consultation covered 'Legislation for enforcing the development of airspace change proposals'; that aspect of the consultation closed on 11 April 2019, and this document sets out the government's response to it.
- 2 DfT received 66 responses to the consultation relating to Annex A to the Aviation 2050 consultation.

## Background and Context

- 3 The UK's airspace is an essential, but invisible, part of our national transport infrastructure, and is also some of the most complex in the world. However, it has not undergone significant change since the 1950s, and this outdated infrastructure is struggling to keep pace with the growing demand for aviation. The situation will deteriorate further in the coming years as demand for air travel continues to rise, resulting in delays for passengers of 30 minutes on 1 in every 3 flights by 2030 if no action is taken.
- 4 Airspace modernisation can deliver major benefits, through the introduction of technology enabling more efficient flight paths that can increase capacity, provide better access to airspace for all users, be optimised to reduce noise for local communities, deliver more carbon efficient routes or reduce delay for passengers. We can also expect to see a large reduction in, or the elimination of, planes queueing in holding stacks over the UK, with any remaining stacks operating at higher altitudes.
- 5 Airspace modernisation is being delivered by the aviation industry. The DfT and the CAA have committed to co-sponsor airspace modernisation to support this delivery, including through setting the overall strategy and governance for the programme. We will work collaboratively with the industry, local communities, General Aviation (GA), environmental groups, the Ministry of Defence (MOD) and other key stakeholders to support this delivery in a way that seeks so far as possible to deliver the needs of each stakeholder group.
- 6 The CAA published its new Airspace Modernisation Strategy (AMS), in December 2018.<sup>2</sup> This sets out the initiatives that the aviation industry must deliver to modernise UK airspace, such as the introduction of new technologies

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<sup>1</sup> [Aviation 2050 — the future of UK aviation](#)

<sup>2</sup> [CAA Airspace Modernisation Strategy](#)

and the redesign of airspace, including an airspace classification review.

- 7 This redesign of airspace is highly complex. We expect that up to 16 airports in the South of the UK, and NATS (En Route) plc (NERL), will bring forward airspace changes in the near future. Feasibility work conducted by NERL into airspace modernisation in the South of the UK shows that there is a high level of interdependence between these different airports demands over airspace<sup>3</sup>.
- 8 Airspace change sponsors – usually airports or Air Navigation Service Providers (ANSPs) – will need to develop their Airspace Change Proposals (ACPs) in close collaboration with each other and ensure that they develop and consult on these in a coordinated way. If they do not, a scenario could be created whereby airports consult separately on, and then submit to the CAA for decision, conflicting design options. This would be inefficient, could be very confusing to stakeholders, and could cause major delays to the modernisation programme.
- 9 In order to help airspace change sponsors overcome these coordination challenges, the DfT and CAA asked NERL to set up a new body, the Airspace Change Organising Group (ACOG) to coordinate airspace change across the North and South of the UK. ACOG is a ring-fenced team within NERL with governance arrangements, line management, decision making and IT infrastructure that are self-contained. The composition of the ACOG team is intended to support its independent approach and ensure that the interests of one party are not prioritised above those of the other organisations that ACOG supports.
- 10 Given the benefits that modernisation can deliver the government expects airports to participate in the modernisation programme voluntarily, working closely with ACOG. We are encouraged that many airports are engaging well and have begun the airspace change process.
- 11 However, neither the government nor the CAA currently have effective levers or powers to guarantee that airspace change is taken forward, should an airport or airports decide that they do not wish to participate in the programme on a voluntary basis. This means that, where ACPs are interdependent, one airspace change sponsor could hold up several others. There are also no effective levers to guarantee other individual airspace changes, if identified within a masterplan of airspace change, such as those that could provide a noise benefit or gives greater access to airspace for general aviation, are prepared and submitted to the CAA.
- 12 In December 2018, we launched a consultation on a new policy to address these issues, through new proposed powers for the Secretary of State to be able to direct that an ACP is taken forward. The government only expects the powers to be used where voluntary participation has been unsuccessful and following discussion with the parties involved. The powers can also be used to direct an airport or an ANSP to bring forward an ACP to release underused controlled airspace where it is safe to do so, and would act as an additional lever to the CAA's work on the airspace classification review.

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<sup>3</sup> [Airspace report about and containing the NATS feasibility report](#)

## Stakeholder engagement

- 13 We held Focus Group discussions with a range of stakeholders in June and July 2018 to develop the policy.
- 14 We engaged with stakeholders during the consultation period. In particular, we engaged through:
  - The Airspace and Noise Engagement Group (ANEG), which brings together representatives from local authorities, community and environmental groups, airports, airlines, ANSPs and sectoral bodies.
  - The Airspace Strategy Board, chaired by the Aviation Minister. This groups sits at the top of the Airspace Modernisation Strategy governance structure and engages with a wide range of key stakeholders.

## Airspace Change Masterplan

- 15 The government recognises that there is an immediate challenge in the south of the UK to coordinate multiple airspace changes across different airports in order to modernise our highly congested airspace. Multiple airports across the South East, as well as NERL, are therefore preparing to bring forward the Future Airspace Strategy Implementation- South (FASI-South) Programme of airspace changes in the next few years.
- 16 NERL have been commissioned by the DfT and the CAA, as co-sponsors of airspace modernisation, to create an Airspace Change Organising Group (ACOG) that will initially coordinate the FASI-South Programme. ACOG will also take on the coordination role for the FASI-North Programme in December 2019.
- 17 ACOG will support NERL in creating a single coordinated implementation plan for airspace changes in the South of the UK (masterplan for short)<sup>4</sup>. The CAA intends to add NERL's role in creating a masterplan and in establishing and maintaining ACOG as a condition in their en-route licence, as part of Reference Period 3.
- 18 The purpose of the masterplan is to set out where airspace change could be taken forward to provide benefits, to consider potential conflicts, trade-offs and interdependencies, and set out a preferred implementation plan. It will not include detail of individual airspace designs or solutions.
- 19 The masterplan will identify where airspace changes are needed to deliver safety, capacity, noise reduction, improvements to air quality, fuel efficiency, and improved access to airspace for GA or the military, or to introduce new technology. The development of the masterplan will be an iterative process.
- 20 While the current masterplan being developed will include changes required in the south, in future, the masterplan will be extended to cover the north of the UK.

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<sup>4</sup> [CAA Airspace Modernisation Strategy Governance Structure Annex](#)

- 21 The government's intention is to use the proposed powers solely for ACPs that will deliver the CAA's strategy and plan under Air Navigation Direction 3(e). Initially, the way that the government plans to do this, is through only using the powers in respect of ACPs that have been identified as part of the airspace change masterplan (which, once accepted by the co-sponsors CAA and DfT, will be one part of the CAA's overarching strategy and plan).
- 22 This means that the legislation will allow the government to use the powers to progress ACPs that were not in the masterplan, but were necessary to deliver the CAA's broader strategy and plan, if it wished to do so in the future. If it decided to do so, it would make this clear.

### **Masterplan iterations**

- 23 The co-sponsors will produce guidance as to how the masterplan will be assessed and accepted. The legislation would only be used against an accepted masterplan.
- 24 The masterplan will be delivered in at least two iterations. The first iteration will not include detail on conflicts and interdependencies, i.e. where different ACPs may not both be possible or where an ACP can only go ahead if another ACP also goes ahead. The first iteration will also not include potential ACPs identified by NERL that are driven primarily by the potential to reduce noise, reduce controlled airspace, or other factors. NERL has taken this approach because it suggests that this information will not be available until airports are further into the airspace change process.
- 25 The first iteration of the masterplan was submitted to the DfT and CAA for their assessment in summer 2019 and is currently being assessed. The co-sponsors do not anticipate this iteration of the masterplan being mature enough to use as the basis for using the proposed powers.
- 26 The co-sponsors will then set out a plan with respect to placing this information in the public domain. NERL will then be able to engage with a wider range of stakeholders to further develop a second iteration in 2020, and any future iterations beyond that.

### **Next Steps for implementing the new policy**

- 27 The government intends to introduce the policy in primary legislation. Aviation, including airspace, is a reserved matter and the proposed policy will apply to the whole of the UK.
- 28 The CAA will develop guidance on how they would monitor the progress of the ACPs within the masterplan and therefore the basis of any advice to use the powers. This will include setting out the process that the CAA's oversight team will take before recommending the use of the powers.

## 2. Summary of consultation responses and government response

### Question 1 Should the government legislate for powers to direct individual ACPs identified as necessary in a masterplan to be taken forward?

- 2.1 The government's proposal was to give the Secretary of State powers to direct that an airport or ANSP bring forward an ACP identified as necessary in a masterplan of airspace changes.
- 2.2 There was majority support for the proposal to bring forward legislation. The majority of airline, airport, Local Authority (LA) and GA respondents expressed support for the proposals. They recognised that airspace modernisation is important, and that the proposals attempt to fill a legislative gap for the government to have effective levers to ensure that the programme can be successfully delivered. These respondents also considered that the powers to direct changes should be used as a last resort and suggested that oversight for the use of the powers should be through the AMS governance structure.
- 2.3 Community noise and environmental interest groups were generally opposed to the proposals. They consider that the rationale for the airspace change programme is about increasing aviation capacity to facilitate growth and this can't be supported in the absence of an appropriate environmental framework.

### Government Response

- 2.4 **The government has decided to proceed with its policy proposals with some changes as referred to below. The government intends to take forward legislation which will provide new powers for the Secretary of State to be able to direct that an ACP must be prepared or submitted, that steps must be taken to obtain approval, or that its post-implementation review must be carried out.** Given the importance of airspace modernisation in reducing air traffic delays, costs and disruption for passengers and businesses, and reducing holding stacks which cause unnecessary noise and emissions, the government considers it necessary to create new powers to require ACPs to be progressed. This would guarantee that ACPs identified within an accepted masterplan of airspace change can be prepared and submitted to the CAA in a coordinated and timely manner.
- 2.5 In response to the concerns raised by some local community and environmental groups, the government believes that airspace modernisation can deliver a broad range of benefits and is not solely focussed on growth.



Through the ACP design process, the need to consider good outcomes for noise, GA, military requirements, and other factors will be built into the design and approval process. Furthermore, as part of the co-sponsors' commission to NERL to produce a masterplan, NERL has been asked to identify ACPs which may be brought forward for the benefit of a wide range of airspace users, including GA, and those affected by aircraft noise. NERL will engage with a wide range of stakeholders to do so.

- 2.6 **It remains the government's intention that the powers to direct would only be used in relation to ACPs that have been identified within the CAA's strategy and plan (in the first instance this will be ACPs within the masterplan)** The government expects that the new airspace modernisation governance structure set up to oversee the delivery of airspace modernisation will help to ensure that ACPs, as part of a masterplan, are taken forward voluntarily by industry. Early signs are that those responsible for preparing and submitting ACPs are engaging well with the modernisation programme. Therefore, the powers would only be used as a last resort where voluntary cooperation was not successful.

## Q2. What are your views on the two proposals?

### Q3. Do you agree that option a) should be the lead option?

- 2.7 The government proposed two powers:
- a. Secretary of State to direct airports/ANSPs to develop ACPs identified within a masterplan of changes.
  - b. Secretary of State to direct airports/ANSPs to cooperate with NERL to put forward ACPs identified as necessary within a masterplan of changes on the airport's behalf.
- 2.8 The consultation document indicated that the government would consider whether other third parties could also be asked to take forward ACPs on behalf of airports/ANSPs. We also proposed to consider whether it would be appropriate to delegate these powers to an appropriate authority such as the CAA.
- 2.9 The government's proposal was that both powers referred to in options a) and b) are taken, but that it would be preferable in most circumstances for the ACP to remain with the initial sponsor of the ACP.
- 2.10 Respondents broadly supported the production of a masterplan by NERL, working with ACOG, and considered that there should be consultation and engagement regarding the masterplan with all relevant stakeholders.
- 2.11 The majority of the respondents who supported the proposals agreed with the government that the ACP should usually remain with the original sponsor, given that original sponsors are responsible for their community relations and have the knowledge of their local area and can therefore balance the needs of all their stakeholders.

- 2.12 Some respondents were opposed to NERL taking forward ACPs because it would be a significant change to NERL's current operations. In particular, some respondents felt that NERL lacks the community engagement experience and relationship knowledge that an airport operator has with its stakeholders. Furthermore, NERL itself was opposed to taking on this role, citing issues with a lack of resources and ability to take forward lower level ACPs. However, some respondents were supportive of giving NERL this role as a useful last resort to ensuring delivery of airspace change.
- 2.13 A few LAs preferred NERL as the lead option because they considered that airports have competing incentives and do not put communities first. They considered that NERL would be likely to ensure better coordination between ACPs and could introduce more independence and scrutiny.

## Government Response

- 2.14 **The government intends to take forward the following proposals:**
- a. **Secretary of State to direct any of the following groups to prepare and submit ACPs to the CAA:**
    - an air navigation service provider,
    - an airport operator, or
    - another person with functions relating to air navigation.
  - b. **Secretary of State to direct any of the following groups to cooperate with another organisation from any of the following groups to prepare and submit ACPs to the CAA, on its behalf:**
    - an air navigation service provider,
    - an airport operator, or
    - another person with functions relating to air navigation.
- 2.15 **The government's preference is that the original ACP sponsor (i.e. those identified as being responsible for submitting specific ACPs as part of the masterplan) should remain responsible for preparing and submitting its ACP to the CAA, if it did not do so voluntarily and was directed to do so.** This is because the original sponsor is best placed to consider the needs of its local community. If this fails or was not considered appropriate, the government would consider directing another body to prepare and submit the ACP on the original sponsor's behalf.
- 2.16 **The government has, for the reasons outlined above, broadened out who could be asked to cooperate with the original sponsor to submit an ACP for approval to the CAA on its behalf.** This will now include another airport operator or ANSP (this includes NERL, if required); or; another person with functions relating to air navigation. This gives flexibility on who could be asked to prepare and submit an ACP for approval to the CAA. We expect that the legal entity directed to prepare and submit an ACP on behalf of another entity

would be decided by the Secretary of State, on taking advice from the CAA, and we intend for the legislation to require the Secretary of State to consult both the original sponsor and new sponsor before making the direction.

- 2.17 The government recognises that some stakeholders do not support NERL being asked to take forward ACPs on behalf of other ACP sponsors. The government agrees that it is preferable for ACPs to be taken forward by organisations that have existing relationships with their local communities, usually airports for ACPs between 0-7000ft. **However, the government still believes that there is value in retaining NERL as an option.** Our view is that despite our decision to broaden the powers, within this NERL remains the best placed existing body that could be asked to prepare and submit ACPs on behalf of other organisations.
- 2.18 **The government's intention is to use the proposed powers solely for ACPs that will deliver the CAA's strategy and plan under Direction 3(e) of the Directions. Initially, the way that the government plans to do this, is through only using the powers, if required, to mandate progressing ACPs that have been identified as part of the airspace change masterplan (which is one part of the CAA's overarching strategy and plan).**
- 2.19 The government recognises respondents' concerns that 'take forward' an ACP needs to be better defined in order to be clear what is asked of the sponsor being directed with the new powers. **The government therefore has proposed the sponsor could be directed to prepare or submit an ACP, take steps to obtain approval for an ACP that has been submitted, or review its operation once implemented (or any combination of these)..** The process for identifying the ACPs will be through the masterplan, and the CAA will set out a timeline for sponsors to prepare and submit ACPs, in accordance with the CAA's Airspace Change Process (currently CAP 1616).
- 2.20 **The government intends to give the direction-making powers to the Secretary of State and this would be set out in legislation. However, we expect that within the legislation, the Secretary of State will have the option to delegate the powers to the CAA via a notice in writing.** If this is the case and in the interests of transparency, the CAA will be required to publish this notice. Both organisations intend to put in place appropriate internal governance structures to manage any potential conflicts of interests (i.e.: to separate out various other functions).

#### Q4. What are your views on the scope for the use of the powers?

- 2.21 The government proposed that the powers should be used to ensure that the changes identified within the masterplan are delivered. Given that the masterplan will be designed around several policy considerations, the government considered it would be appropriate that the powers to direct an ACP would apply to all these factors.
- 2.22 The majority of aviation industry respondents supported the scope of the proposed powers and considered that these were relevant to achieving the goals of the airspace modernisation programme. Many GA respondents

considered that the scope must include a mandate to direct removal of controlled airspace no longer required for the purpose for which it was originally intended. Community groups in particular supported the use of the powers to direct ACPs that could give noise benefits to communities.

- 2.23 The majority of respondents suggested there should be engagement on the masterplan and some suggested an oversight committee, so that those involved in the production of a masterplan can voice their concerns.
- 2.24 Some respondents believed that the scope was too wide-ranging and the different policy goals could often come into conflict. They requested clarity on how trade-offs between different policy goals could be made, both in general and for each individual ACP included in the masterplan.
- 2.25 Some respondents considered that the powers should not be limited to be used only for airspace changes identified in a masterplan.

## Government Response

- 2.26 **The government considers that the proposed scope for the use of the powers is appropriate to meet the government’s policy objectives.** In particular, the government believes that, given the masterplan will be designed around the factors set out in section 70 of the Transport Act 2000, the masterplan should successfully achieve the goals of the airspace modernisation programme.<sup>5</sup> DfT and the CAA, as co-sponsors of airspace modernisation, will also assess the masterplan, taking into consideration the section 70 factors.
- 2.27 **The government and CAA commissioned NERL to establish ACOG. ACOG will support NERL in creating a masterplan for airspace change.** The government expects that through close engagement with key stakeholders, the masterplan will be developed in a collaborative manner, seeking so far as possible to deliver the needs of airports, airlines, community interest groups, GA and other stakeholders as required by the CAA’s duties when considering airspace design in accordance with section 70 of the Transport Act 2000.
- 2.28 The government recognises respondents’ concerns over engagement on the masterplan and NERL will be required to include an engagement plan as part of the commission to prepare the masterplan. This plan will include all stakeholder groups listed in the airspace modernisation governance structure, such as GA and community representatives.
- 2.29 **The government has decided that the factors in s.70 of the Transport Act 2000 would not need to be considered when deciding whether to make a direction using the proposed powers.** This is because s.70 will already have been considered when developing the masterplan, and will again when a decision is made by the CAA on whether to approve the ACP. The government recognises that a future version of the masterplan (to be delivered post July 2020) may have to resolve potential conflicts between changes. Depending on

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<sup>5</sup> [Transport Act 2000, Section 70](#)

the nature and extent of those conflicts, the government will consider creating new policy to help determine how these trade-offs are made.

#### **Q5. What are your views on the use of the triggers for using the legislative powers?**

- 2.30 The government proposed that there could be at least two triggers for the powers to be used. These are because of a failure to initiate an ACP or failure to adhere to the proposed timeline for an ACP. The government expects that before any formal action is taken to direct an airspace change under the proposed legislation, the new oversight team being set up within the CAA will monitor the progression of the ACPs within the masterplan, and provide support and engage with the sponsor before the use of the powers are triggered.
- 2.31 Respondents welcomed the role of the oversight team in monitoring the masterplan and broadly supported the proposed triggers, which they considered should be used as a last resort. Airline and airport respondents requested clarification on how the triggers would work in practice and the timelines for the activation of the powers. These stakeholder groups also expressed concerns that the powers could be triggered if delays to a timeline are due to delays by the CAA rather than the sponsor.

#### **Government Response**

- 2.32 **The government intends that the CAA should adopt these factors as triggers for recommending that the Secretary of State use the new powers.**
- 2.33 **The CAA's oversight team will be responsible for making a recommendation on the use of the powers.** If the powers remain exercisable by the Secretary of State, the CAA's oversight team will make a recommendation to the Secretary of State about the use of the powers. If the powers are delegated to the CAA in future, the CAA's oversight team would advise the CAA team taking the final decision on whether to use the powers. For the purposes of the section below, we have assumed the powers are retained by the Secretary of State.
- 2.34 While the powers are to be used as a last only where considered necessary, the two triggers identified aim to ensure any issues with delivering an ACP can be highlighted by the CAA to the Secretary of State. The government expects the CAA's oversight team to engage with the sponsor so that alternative means of bringing about the ACP can be considered before consideration is given to using the proposed new direction-making powers. The decision to use the powers can then be made by the Secretary of State to ensure successful delivery of the airspace modernisation programme, if the alternative means are unsuccessful.
- 2.35 The CAA's airspace regulation team expect to agree a timeline with sponsors for preparing and submitting an ACP. The CAA's oversight team can then

monitor progress against that timeline and the masterplan. This would ensure that the CAA knows whether the ACP sponsor is working towards submitting an ACP, in a timely manner. It should also ensure that the sponsor provides sufficient quality resource to progress the ACP, as if they do not, they could risk falling behind the agreed timeline and ultimately face the sanctions proposed for inclusion in the primary legislation.

- 2.36 The CAA's oversight team will work with the airport operator/ANSP or other entity before recommending that the Secretary of State uses the powers. We expect that the legislation will also require that the Secretary of State consults with the airport operator/ANSP or other entity before exercising the direction-making power. Where technical issues arise, or something exceptional, unforeseeable and outside the sponsor's control occurs, the government's preference would be for the CAA's oversight team to assist in resolving any issues with delivery rather than for the powers to be used.
- 2.37 The government therefore does not intend to use the powers where delays are due to factors that are outside of the sponsor's control.

#### **Q6. What are your views on the proposed sanctions and penalties regime?**

#### **Q7. What are your views on the grounds for appeals?**

- 2.38 In order to ensure that direction made using the proposed new powers can be effectively enforced, the government proposed that these are accompanied by appropriate sanctions for non-compliance. An option we put forward in the consultation is that similar enforcement tools available to the CAA under the Civil Aviation Act 2012 for enforcing the economic licences of airports are used. This includes giving the CAA the power to impose fines of up to 10% turnover and/or a daily amount up to 0.1% of turnover until the direction to prepare and submit an ACP to the CAA was followed by the sponsor.
- 2.39 As is the case for airports regulated under the Civil Aviation Act 2012, these powers would be accompanied by appeal rights for the company issued with an enforcement order and penalty. In the consultation, the government proposed that the grounds for appeal would be the same as those in the Civil Aviation Act 2012, and the appropriate destination for the handling of appeals would be a suitable tribunal chamber in the Unified Tribunal system, or the Competition and Appeals Tribunal (CAT), as is the case for enforcement appeals considered under the Civil Aviation Act 2012.
- 2.40 **Respondents broadly supported the proposed sanctions and penalty regime, if these are applied proportionately and used as a last resort.** Some airport respondents considered that fines should not be issued to smaller airports, as this could risk bankruptcy if the airport could not afford to take forward an ACP. Respondents felt that timescales in contravention notices should be spelt out before an enforcement order is given. Some airline respondents considered the funds from penalties should be ring-fenced for other ACPs, while some LA's suggested the funds go into community funds.
- 2.41 Respondents broadly supported an appeals mechanism for enforcement orders and were content on the proposed grounds for appeals. A few respondents

suggested that there should also be a mechanism to appeal a direction. There were limited views on the most appropriate appeal body, however, there was support for the CAT to hear appeals, given that they deal with enforcement appeals under the Civil Aviation Act 2012.

- 2.42 A number of respondents expressed concerns over the length of time that an appeal could take, given that this could result in delays to the overall modernisation programme. In general, respondents requested further clarification on how the enforcement regime would work in practice.

## Government Response

- 2.43 **The government intends to take forward its sanctions and penalties regime proposal.** We consider that the threat of a financial penalty would act as an appropriate deterrent for non-compliance, and therefore could help to ensure that the airspace modernisation programme can be delivered voluntarily without the use of the powers. The proposed approach is considered to be regulatory best practice and is broadly similar to the regime available to the CAA in relation to the regulation of airports under the Civil Aviation Act 2012.
- 2.44 **The government intends to give the CAA the responsibility for enforcing the sanctions and penalties regime.** It expects the CAA's oversight team to make a judgement about the level of sanction or penalty that is appropriate and should be applied to the recipient of a direction that is not complied with.
- 2.45 Power to impose fines of up to a maximum fine 10% turnover and/or a daily amount up to 0.1% of turnover is already in place for the regulation of airports under the Civil Aviation Act 2012 and is also consistent with enforcement penalties issued in other regulated sectors such as water and energy.
- 2.46 **As is the case for those sectors and in line with HM Treasury policy, all proceeds from financial penalties would go into the Consolidated Fund.** Fines and penalties are compulsory payments to general government that are in the nature of a punishment. HM Treasury does not normally allow the penalty fees to go back to the enforcement organisation, as it provides perverse incentives on that organisation to chase enforcement income to offset its other costs.
- 2.47 **The government believes that penalties should apply to any organisation that does not comply with a given direction.** This means that if the ACP remains with the original sponsor, that sponsor can be sanctioned for not preparing and submitting an ACP in line with the agreed timeline. This also means that if the ACP is given to a different body, that body can be sanctioned if it then doesn't prepare and submit the ACP in line with an agreed timeline. In this scenario, we expect that the original sponsor can also be sanctioned if it does not cooperate with the body taking forward the ACP on its behalf.
- 2.48 However, the CAA would have regard to the requirement of proportionality in using the power to fine, in accordance with its statutory duties, better regulation agenda and the Hampton/Macroray principles of better enforcement.<sup>6</sup>

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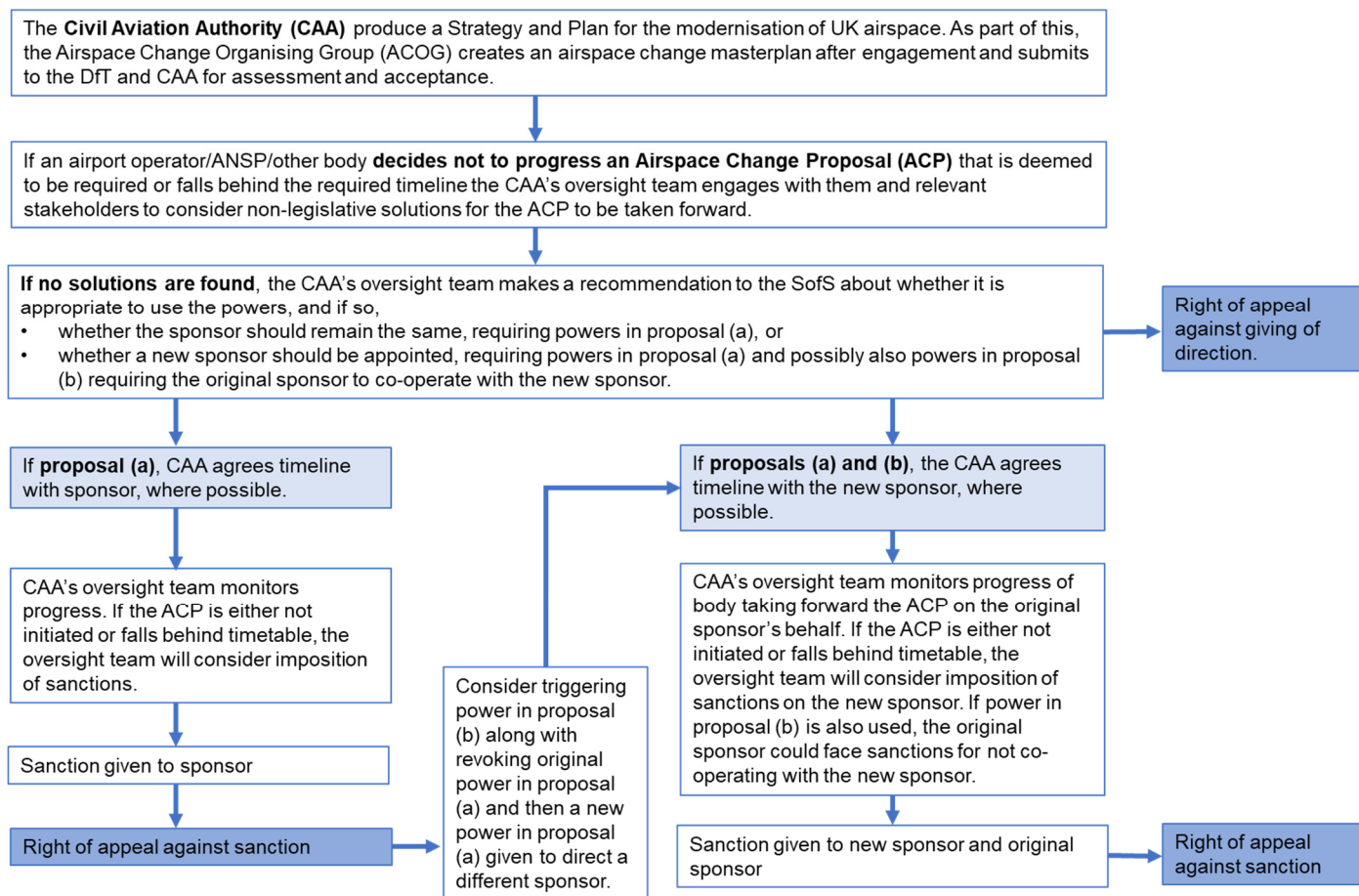
<sup>6</sup> [Regulatory Justice: Making Sanctions Effective, November 2006](#)

- 2.49 **The Government considers that the Competition Appeal Tribunal is the appropriate body to hear appeals against enforcement orders.** The government is of the view that the CAT has the necessary expertise and experience to deal with such cases, and the CAT is also the body which determines enforcement appeals under the Civil Aviation Act 2012. This is in line with bringing a greater deal of consistency within the aviation sector, a key aim for the Government in streamlining regulatory and competition appeals.
- 2.50 **In line with the Government's preference for ensuring consistency within and across sectors, the grounds for appeals mirror those used in the regulation of airports under the Civil Aviation Act 2012 and in other regulated sectors, and it is content that the same grounds would be suitable to apply to the proposed new powers.**<sup>7</sup>
- 2.51 The government proposes that the recipient of the enforcement order would be able to appeal in relation to the following matters:
- the validity or terms of an enforcement order;
  - the imposition of a financial penalty;
  - the amount of the penalty
- 2.52 The grounds for appeal would be the same as those which exist under the Civil Aviation Act 2012:
- that the decision was based on an error of fact;
  - that the decision was wrong in law;
  - that an error was made in the exercise of a discretion.
- 2.53 **The government is also intending to put in place a right of appeal right for the recipient of a direction.** This is to ensure fairness, given that the potential use of the direction can result in significant penalties for the recipient of a direction. The government proposes that the grounds for appeal would be the same as those which exist under the Civil Aviation Act 2012 (see paragraph 2.52 above), to ensure consistency.
- 2.54 The CAA intends to produce guidance on its new enforcement powers to make it clear to stakeholders how the sanctions and penalties regime would work in practice. The policy intention is that the CAA would have the option of issuing a penalty if a direction has been given (i.e. terms and milestones), but an ACP has not been initiated; and once the ACP has been initiated, if the sponsor is not meeting the required milestones (See Fig. 1):

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<sup>7</sup> [BEIS \(2013\) Streamlining Regulatory and Competition Appeals: Consultation on Options for Reform](#)





**Fig.1 Flow-diagram on how the proposed powers would work in practice.**

**Q8. What are your views on the best approach to funding an airspace change where a small airport may need financial support to do so?**

- 2.55 The consultation document set out the government’s expectation that under proposal a) where an airport or ANSP or other entity (i.e. owner of the ACP) is directed to take forward an ACP, the airport, ANSP or other entity will fund this.
- 2.56 The consultation document also set out that that the government expects that, under proposal b) where NERL takes forward an ACP on behalf of the owner of the ACP, NERL may be eligible to recover their efficient costs from airspace users.
- 2.57 The consultation document set out that the government wanted to consider whether, for small airports where airspace change is required but where the airport may be in need of financial support to carry out some aspects of the airspace change process, there may be a justification to consider whether the ACP should be funded from other sources.
- 2.58 The majority of airlines and some airport respondents consider that government funding should be provided for ACPs, given the importance of airspace modernisation. The majority of other respondents agreed that ACPs should be funded by airspace users rather than the general taxpayer.

2.59 Respondents were generally supportive of a funding mechanism for smaller airports that may be unable to fund their own ACPs where there is a wider benefit, although rules would need to be clear and specify under what conditions this may apply.

## Government Response

2.60 The government believes that commercial air passengers should fund the cost of their travel, rather than for this to be subsidised by the general taxpayer.

2.61 Therefore, under proposal a), the government expects the airspace change sponsor to fund its ACP.

2.62 If, under proposal b), the Secretary of State appointed NERL to take forward an ACP on behalf of another entity, the government expects that the costs should be met from the NERL en-route rate. CAA's proposals for the UK RP3 performance plan identify two potential mechanisms available to NERL to enable it to meet such ACP costs:

- New cost items not covered in the performance plan but required by law – Where, as a result of this new legislation, NERL is required to bring forward ACPs on behalf of another entity, Article 28 of the EU performance and charging regulation provides a mechanism for such new costs items to be recovered by NERL in future Reference Periods<sup>8</sup>.
- Opex Flexibility Fund – Alternatively, under CAA's proposals, NERL will be able to use the Opex Flexibility Fund (OFF) to support NERL airspace modernisation activities. Where appropriate, this might include where NERL takes forward an ACP on behalf of another entity.

2.63 The government recognises that this could create perverse incentives, whereby an airspace change sponsor may deliberately delay taking forward an ACP so that it is given to NERL to take forward. However, as set out above, the government's preference is to leave the ACP with the sponsor and direct them to take it forward, with accompanying sanctions if necessary. The government considers that this provides a sufficient deterrent to airports deliberately delaying taking forward ACPs.

2.64 If, under proposal b), the Secretary of State directed another third-party entity to take forward an ACP, the government would need to further consider the available funding mechanisms.

2.65 The government also recognises respondents' concerns that small airports may not be able to afford to fund the full cost of ACPs that have been identified within the masterplan. It is possible that the CAA's oversight team may be able to suggest alternative solutions. These could include the sponsor seeking support from those larger ACP sponsors most likely to benefit from airspace modernisation, or whose own plans depend upon the change in question.

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<sup>8</sup> Article 28(3)(e) of Commission Implementing Regulation 2019/317 enables the recovery of 'unforeseeable new cost items not covered in the performance plan but required by law'.

# Annex 1 List of Respondents

ADS	Gatwick Area Conservation Campaign (GACC)
Airlines UK	GATCO
All Party Parliamentary Group on General Aviation (APPGGA)	Gatwick Airport
Airport Operators Association (AOA)	General Aviation Alliance
Aircraft Operators and Pilots Association (AOPA)	Hammersmith and Fulham Council
Association of Remotely Piloted Aircraft Systems (ARPAS)	Heathrow Airport Ltd
Aviation Communities Forum	Heathrow Strategic Planning Group
Aviation Environment Federation (AEF)	Humberside International Airport Limited
British Gliding Association	International Air Transport Association (IATA)
British Microlight Aircraft Association	ICAMS (Industry Coordination for the Airspace Modernisation Strategy)
Buckinghamshire and Milton Keynes Association of Local Councils	International Airlines Group (IAG)
Campaign to Protect Rural England (CPRE) Hampshire	Jane Ashton
Communities Against Gatwick Noise and Emissions (CAGNE)	LAANC (Local Authorities Aircraft Noise Council)
Cranfield University	London Borough of Hounslow
Crawley Borough Council	Light Aircraft Association (LAA)
Edinburgh Airport	Local Government Technical Advisers Group (LGTAG)
Edinburgh Airport Noise Advisory Board	London Biggin Hill Airport Limited
Englefield Green Action Group (EGAG)	London City Airport
	London Luton Airport (Council)
	London Luton Airport
	Manchester Airport Group (MAG)

NATS  
Newcastle Airport  
No 3rd Runway Coalition  
Osprey Consulting Services Ltd  
Parish Councils Airport Association (PCAA)  
People Against Intrusive Noise  
Plane Justice  
Regional and City Airports  
Richmond Heathrow Campaign  
Royal Aeronautical Society (RAeS)  
Strategic Aviation Special Interest Group (SASIG)  
Southwark Council  
Spelthorne Borough Council  
Stobart Aviation (London Southend Airport)  
Stop Stansted Expansion  
Surrey County Council  
Teddington Action Group  
Thomas Cook  
Uttlesford District Council  
Virgin Atlantic  
Welsh Government  
Wrington Parish Council  
Anonymous respondents (x5)