

New burden assessment

Details of the proposal – please answer in area provided below question	
Q1	Name of Lead Department.
A1	Department for Transport
Q2	Working level contact details in lead department.
A2	Name: Jonathan Friel Team: Aviation Policy Division
Q3	Name of policy/duty/expectation.
A3	Implementation of EU Regulation 598/2014 ¹ (“the Regulation”) on establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at airports, and the designating of a “competent authority” for the “Balanced Approach”, as defined in the regulation.
Q4	Description of the policy objective.
A4	<p>The Regulation sets out rules and procedures to be followed when noise related operation restrictions are being considered with airports more than 50,000 civil aircraft movements per year, based on an average of the last three calendar years. The Regulation requires a member state to designate one or more competent authorities to ensure compliance with the Regulation, and it prohibits the airport from taking on this role. The competent authority would be required to ensure that the “balanced approach” is applied, and noise problems are addressed in the most cost effective way. The Regulation reaffirms many of the planning authority obligations that already exist in UK domestic law and guidance (see below).</p> <p>In most instances the current process provides for airports’ appropriate controls agreed by the airport themselves, or locally between the airport and the local authority, usually as conditions agreed through the planning process. Although the Government does not usual get involved in local planning applications, we are aware of three recent examples where local authorities agreed controls during the planning process:</p>

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0598&from=EN>

	<p>(i) Night flight restrictions were agreed under Section 106 between Luton Airport and Luton Borough Council in 2013 when a planning permission was agreed for terminal improvements and a passenger cap increase;</p> <p>(ii) Night and weekend operating restrictions were agreed under S106 between London City Airport and the London Borough of Newham in 2015 when a planning permission was agreed for a new terminal and airside ground improvements. This also involved a S106 condition that involved London City Airport funding a resource inside the local authority to monitor adherence to the restrictions; and</p> <p>(iii) Noise operating restrictions were agreed under S106 between Manchester Airport and Cheshire County Council in 1997 when agreeing permission for a second runway.</p> <p>The process is different for “designated airports”² (Gatwick, Heathrow, and Stansted), where the Secretary of State for Transport (“SofS”) has a role in setting noise controls, and for call-ins on local planning applications (whether a Nationally Significant Infrastructure Project “NSIP” or not).</p> <p>Our proposals will, therefore, keep the process largely the same for non-designated airports, but it would formalise the role for the local planning authority. This means the planning authority would have the same duty to balance the considerations of the National Planning Policy Framework³ (economic, social and environmental) when determining a planning application made by airports, whilst ensuring communities are properly consulted before making any planning decisions. There would be some additional responsibility in-terms of ongoing monitoring, but the burden of this is recoverable and is covered below (see A7 & A11)</p> <p>For airports currently designated, the proposals will, potentially, enable the local planning authorities to make decisions relating to noise restrictions when considering planning applications, but only if the airport(s) are “de-designated” by central Government in the future. There are two main drivers that could lead to the Government considering altering the status of designated airports, namely: (1) when the current night flight restrictions expire in 2022; or (2) if a planning application is received from a designated airport. Clearly, for nationally significant decisions, such as those attached to a third runway at Heathrow, the Government would remain the competent authority.</p>
Q5	Stage proposal is at (e.g. initial draft, consultation document, Cabinet clearance, etc.). If first draft, please state when update will be submitted.
A5	Post consultation. We are in the process of drafting the Government response and we are seeking to take forward the proposal.

² The Government has designated Heathrow, Gatwick, and Stansted since 1971.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

Q6	Brief expected timeline of the forthcoming key stages, including committee clearance.
A6	The draft Government response document is scheduled to go for write round w/c 9 October, and we will publish following cabinet clearance. Implementation of the policy will not take place until the next financial year (2018/19).
Q7	What the proposal requires local authorities to do, and how this differs from what they are doing now. If there is no difference, why is the new power/duty/expectation being made?
A7	<p>In most instances, local authorities already consider noise impacts where there is a relevant non-NSIP planning application (less than 10m pax/10K freight movements per year). Currently, there are nine airports in England and Wales that meet the airport criteria under the Regulation. These are:</p> <ul style="list-style-type: none"> ○ Heathrow [designated] ○ Gatwick [designated] ○ Stansted [designated] ○ Manchester ○ Luton ○ Birmingham ○ London City ○ Bristol ○ East Midlands International <p>Glasgow, Edinburgh, and Aberdeen, all meet the criteria under the Regulation, but as these are Scottish airports and planning matters are devolved, they are not considered as part of this assessment. Instead, the Scottish Government will be required to designate its own competent authority. Matters are also devolved for Northern Ireland, though no Northern Irish airports currently receive enough traffic to meet the Regulation's criteria.</p> <p>As the planning process already takes place and this often involves airport controls being agreed between the airport and local authorities (examples in A4), the proposal will formalise the role for the local planning authority. This will also mean that the airports can no longer make their own decisions in defining the appropriate controls, ensuring the Government is compliant with the Regulation.</p> <p>Although responsibility for setting operating restrictions at designated airports may move from the SofS to local authorities, this would only happen if the SofS decides to de-designate these airports in the future (See A4). Should an airport be de-designated, the proposal would align the procedure with the wider planning application process for non-designated airports. Local authorities and communities could benefit from this change, ensuring that decisions on any restrictions are tailored and made closer to areas that are actually impacted by airport noise. Further, the Government believes that any additional burden would be limited, as planning authorities are already obliged to consider several environmental issues, including noise, when making planning decisions.</p>

	<p>The Regulation does require the competent authority to ensure aviation noise from airports is in accordance with EU law, for instance, that impacted parties are consulted, that noise maps around in scope airports are produced every five years, and that any operating restrictions that are implemented are monitored. We believe the burden of this to be minimal, as the onus can be placed on the airport through planning conditions, and that the local authority would simply monitor adherence to specified criteria, the cost of which could also be funded by the applicant through the planning agreements (See A7 & A11).</p> <p>For info: When operating restrictions are brought forward by an airport <u>outside</u> of the planning process, for instance as a result of a Noise Action Plan⁴, or for NSIPs, such as any conditions that may be associated with the expansion of Heathrow Airport, the SofS would be the competent authority for ensuring the Balanced Approach is applied.</p>
Q8	Expected date the policy impacts on local authorities. If implementation is to be phased in, please give estimated dates for each phase.
A8	This is yet to be confirmed but the start of the next financial year (April 2018) is likely to allow stakeholder adjustments to the changes, though impacts will only occur if there is a relevant planning application.
Q9	Is an impact assessment being completed?
A9	The regulation is EU derived and is therefore considered a non-qualifying regulatory provision. As such, it is not subject to a full Regulatory Impact Assessment, though a high level assessment of costs and benefits to industry was conducted through the use of a DfT internal Regulatory Triage Assessment (RTA), in line with Departmental procedures.
Estimated costs/savings	
Q10	Has the proposal been appraised in accordance with HM Treasury <i>Green Book</i> principles? What was the outcome of the appraisal?
A10	The analysis in the RTA was conducted in line with Green Book principles. In terms of local authorities, the regulation is expected to impose zero or insignificant costs. The reasoning behind this assumption is set out below (See A11).
Q11	Best estimate of reasonable costs and savings involved for local authorities for each individual year. Please give breakdown <u>by financial year</u> and state whether costs are revenue or capital.
(a)	Overall <u>additional</u> total costs to local authorities for each year.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276226/noise-action-plan-airport-operators-guidance-201401.pdf

A(a)

As explained previously, the nine local authorities affected by this Regulation are already obliged to consider environmental factors, including noise, when considering planning applications. In a number of instances, and where appropriate, this has also involve the planning authority exercising it existing powers to set operating restrictions (see A4). As such, the only additional costs imposed on local authorities are those accrued through monitoring adherence to restrictions post-implementation (see A7). We believe these costs can be provided for by the applicant through the planning process; for instance when the London Borough of Newham gave planning permission to London City Airport for a new terminal and airside ground improvements, the airport agreed to fund the local authorities monitoring of the restrictions. If the planning authority decided not to seek these types of costs, then it would still be within their powers to include, for example, a requirement in planning agreements for the airport to publish flight tracking information, and this would allow them to assess compliance with minimal effort.

These ongoing costs would only be applicable if the planning application was accepted, and there would, therefore, be no additional burden if the application was rejected.

We have identified an increased risk of legal challenge, in that because the Regulation will allow a wider range of individuals / organisations to challenge planning decisions (currently, only the applicant can challenge a decision), then the planning authority in question could be more exposed to appeals. However, it should be noted that opportunities for other parties (such as local residents and community groups) to feed into the planning process already exist. With no similar existing policy to compare against, estimating the costs of this theoretical increased risk of challenge is considered infeasible.

More importantly, we do not believe it would be appropriate for central government to agree in advance to fund legal challenges should they happen, because this would separate the party responsible for making the decision from the party responsible for funding any challenge. Intuitively, this would reduce the incentive for the planning authority to make a clear and robust decision in the first instance. DCLG colleagues have confirmed that they did not believe this would be a new burden associated cost, and that it would therefore be out of scope⁵.

We do not, therefore, believe this policy meets the definition of a “new burden” as set out in DCLG guidance because most of the responsibilities defined in the Regulation already exist in UK law and guidance, and are already undertaken, by local authorities when they consider planning applications. This means that local authorities already incur costs when assessing planning applications, and the changes brought about by this policy are not expected to increase the level of cost or burdens that already exist as part of the planning process. Further, the policy in itself will not lead to an increase in planning applications as decision to lodge a planning application are commercial decisions for the airport, and would be unrelated to this policy. As non-NSIP are already local decision, the Government

⁵ DfT / DCLG at DCLG HQ meeting on 5 September 2017

	<p>does not have figures for how often applications are lodged, but it understands they are relatively rare (see A4 for some examples)</p> <p>The ongoing costs that may be incurred should a planning application be agreed between the planning authority and the airport can be funded through the planning agreement, so this presents no net cost to the local authority (Newham and London City been an example of where this is already been used). We will ensure local authorities are aware of their powers to use already existing levies in our guidance.</p> <p>For the reasons set out above, we expect zero additional costs to local authorities beyond basic familiarisation costs (outlined below).</p>
i.	Element attributable to 'one off' implementation costs.
A(i)	<p>We expect familiarisation costs to be minimal as the process, in most instances, will largely be the same for affected local authorities.</p> <p>Costs borne by local authorities in this area would be a result of reading the updated guidance⁶, and familiarising themselves with the intricacies of the revised process. Given the variation in size of airports within each local authority, and therefore the resource dedicated to aviation planning matters, it is difficult to estimate the precise amount of resource necessary for familiarisation in each authority. However, the updated guidance is expected to be brief (the current draft is four pages). Given this, we would not expect costs of more than £1,000 for the appropriate professionals in each affected local authority to familiarise themselves with it. In order to exceed this figure, a disproportionate amount of staff time would have to be expended.</p> <p>As such, a maximum estimate of £10,000 across the nine affected authorities has been assumed⁷.</p>
ii.	Recurring costs element (for the first 3 years).
A(ii)	<p>This policy is not expected to increase the costs planning authorities already incur when considering planning applications. As with now, planning authorities would only incur the cost when a planning application is made. This policy will not increase the frequency of planning applications as a decisions to lodge a planning application is a commercial for the airport, and any such decision would be unrelated to this policy.</p> <p>As central Government does not get involved with non-NSIP applications, we are not aware how often airports make planning applications. However, we understand</p>

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588186/uk-airspace-policy-a-framework-for-balanced-decisions-on-the-design-and-use-of-airspace-web-version.pdf
(Annex F)

⁷ This cost estimate assumes a £30 per hour wage rate for a local authority senior manager to familiarise themselves with the guidance and Regulation. It would provide for five senior managers at each local authority working for one day before the £1000 cost estimate per local authority would be exceeded.

	them to be rare (see A4 for examples). In any event, we do not consider this to be a relevant factor as planning applications, in most instances, are already local decisions, and something that already happens.
(b)	Estimated specific and identified <u>savings</u> for each year - these must be additional to the annual savings authorities are expected to make and their treatment consistent with the appropriate HM Treasury guidance on efficiency.
A(b)	None expected.
(c)	What are the direct and indirect impacts on local authorities pay and pensions costs?
A(c)	None expected.
(d)	Overall estimate of the <u>Net</u> Additional Cost (costs-savings) to local authorities for each year.
A(d)	None expected.
Discussion with authorities	
Q12	What discussions have taken place with local authority associations, e.g. with the LGA or LC? If there is no planned contact with local authorities through representative bodies, please explain why.
A12	We held a sixteen week consultation between January and May on UK Airspace Policy ⁸ , during which a number of the in scope local authorities responded, as did the Strategic Aviation Special Interest Group (SASIG), a key local government association. We also held a face-to-face meeting with SASIG to discuss the impacts of our proposals.
Q13	Give a brief description of the authorities' views, particularly on costs and financing
A13	Our proposals received mixed consultation responses. Whilst most welcomed the changes in terms of finding local solutions to problems, some raised concerns about the local authorities' resources and expertise. One local authority highlighted that planning authorities already have the duty to balance the considerations of the National Planning Policy Framework (economic, social and environmental) when determining a planning application, so the policy isn't really imposing a new requirement. Although the same respondent said that they would need to look very carefully at governance arrangements for negotiating restrictions that cross economic, social and environmental barriers (such as a new night flights regime),

⁸ <https://www.gov.uk/government/consultations/reforming-policy-on-the-design-and-use-of-uk-airspace>

	<p>and they may require assistance from bodies such as the Independent Commission on Civil Aviation Noise [once created] to set up a suitable structures and providing quality assurance. A number of local authority respondents sought more clarity and guidance.</p> <p>SASIG, both in their consultation and when we met face-to-face, welcomed the proposal of making local authorities the competent authority for ensuring changes are in line with the Regulation, but argued that the proposals would place an additional burden on local authorities, and this would have a resource and monetary cost. SASIG suggested a mixture of being permitted to recover resource costs from the applicant through enhanced fees & S106 agreements, to being permitted to reclaim cost through business rates, or receiving direct funding from central Government. SASIG have called on the Government to set out cost principles in its guidance, and we can confirm that the guidance that will be published that will reaffirm to local authorities their existing powers. It is worth noting that local authorities are aware of this powers and have used them, for instance Newham and London City Airport (see A4 and A11).</p> <p>SASIG has suggested future costs (without supporting evidence) to be between £50k and £100k for each medium sized planning application scheme, based on one full time member of staff working on the scheme for one year, together with consultancy fees. However, the Department believes the costs outlined by SASIG already exist under the current system (ie, there is no additional cost beyond that which that local authorities already incur, or would be expected to incur, when considering planning applications), and therefore these should not be considered additional from the new policy. As identified above (See A11), we believe there will therefore be no or minimal upfront costs, and that ongoing monitoring costs could be provided for through planning agreements.</p>
<p>Providing the resources</p>	
<p>Q14</p>	<p>If there are net additional costs, has the lead department identified where the funding for this new burden is coming from and agreed to fully fund them? Please give details.</p>
<p>A14</p>	<p>None expected.</p>
<p>Q15</p>	<p>What costing evidence/analysis do you have/are you going to undertake to demonstrate that the funding is sufficient, and when will you be providing this?</p>
<p>A15</p>	<p>None expected.</p>
<p>Q16</p>	<p>If costs are to be met by charging, do these cover the full net additional costs, and do authorities have the freedom to determine the fee levels consistent with recovering reasonable costs?</p>

A16	Not expected. However, should planning authorities determine they will incur costs, it is within their power to set pre-commencement planning conditions that would allow for funding for resources, or to set S106 agreements/CIL levies to fund ongoing costs post decision.
Q17	If your assessment is that the proposal will result in no additional costs being placed on local authorities, how will you ensure that this is the case?
A17	<p>We will ensure affected local authorities are made aware of their ability to include information requirements (e.g. flight tracking) or financial support for on-going monitoring as part of existing legally enforceable planning agreements.</p> <p>Local authorities would be free to specify the exact information they feel they would require to undertake this role as part of individual planning arrangements.</p> <p>This provides local authorities with a strong legal backstop to ensure they are provided with enough information to monitor compliance with minimal required effort on their part.</p>
DCLG New Burdens Team Sign Off	
Q18	Have you shared your assessment with the New Burdens Team?
A18	Yes, throughout the process we have worked closely with DCLG's new burdens team to discuss the impacts of this policy on local authorities,.
Departmental Finance Director Sign Off	
Q19	Please state if this is a first or a final assessment of your proposal. If first please indicate when a final assessment will be submitted.
A19	We estimated that the cost burden of this policy is related primarily to familiarisation costs (c. £10,000). The Department considers that administrative cost of transferring £10k outweighs the cost benefit of proving local authority with the familiarisation costs, and as result the Department does not propose to make a transfer of funds. As a result, the assessment will not require DfT finance director sign off, and will instead be approved by SCS in the respective departments (see below).
<p>Signed by SCS as A19 above</p> <p>Signed:</p> <p>Name: Sarah Bishop (DfT SCS)</p> <p>Date: 21 Sep. 17</p>	

Address:

Department for Transport, Great Minster House, 33
Horseferry Rd, Westminster, London SW1P 4DR

Please send the form to the relevant Communities and Local Government contact.

For completion by the DCLG New Burdens Team:

Date received: ...25/09/2017... Reference number: ...1718/03.....